There can be little doubt about the necessity of discouraging nations from using nuclear warheads in the defense of their country. Such a defense would surely bring about a retaliation in kind which would put the lives of many innocent people to a purposeless end.

At one time nuclear power was something that we read about in scientific magazines and in science-fiction stories. Today, we are cognizant of the power that threatens the survival of all mankind. When compared to the age of the earth, man's occupation of our planet has been very short, indeed. And today, we are developing such destructive potentials that all of mankind could be eradicated from this planet in a comparatively short period of time. Man's ability to alter his surroundings to a point of complete destruction has developed in the last several decades.

War is always a potential danger, but war with its most sophisticated weapons is doubly so.

Mr. Speaker, the preliminary Strategic Arms Limitation Talks should concern themselves with these matters of nuclear weapons. If we are to continue to use our technology to keep producing these weapons, we could lead the entire world into a more unstable situation rather than offering a reasonably peaceful outlet to some of these extremely advanced, potentially dangerous technologies.

As part of my remarks, Mr. Speaker, I would like to include an editorial taken from the November 17, 1969, issue of the Record, a newspaper which is widely read in the Ninth Congressional District of New Jersey, the area which I have the honor to represent in Congress.

The editorial follows:

DANGER: BASKETFULL OF EGGS

The North Atlantic Treaty Organization is moving toward greater reliance on nuclear weapons as the deterrent against Soviet aggression. It is to be hoped the foreign ministers of the alliance will reflect carefully before approving total commitment.

The political and economic pressure has been on all the NATO powers to cut back nonnuclear defense forces, and that pressure has led the nuclear planning group, which has been meeting outside Washington, D.C., to plan reliance on nuclear weapons in the event of war in Europe.

The danger is clear. If the Soviet Union should invade an allied nation, say Greece, with conventional armament and the only response of NATO were resort to the use of atom bombs, then the President of the United States would be in an awkward fix.

The use of nuclear bombs, even the ones that are genially described as tactical, would create a grave danger of a Soviet answer in kind, and we'd be off on a war that could depopulate developed sections of the world, to phrase the horror as fastidiously as possible.

The question faced by the President, who must make the decision since the United States would supply the nuclear arms, would be whether the invaded nation, Greece in our example, was worth the risk of general nuclear war.

It is, of course, an indication of the backwardness of all nations, including our own, that such a dilemma is imaginable. There has to be a better technique of international relations than this; but the fact is we haven't found one that can be relied on.

And there also has to be a better response to invasion by conventional means than nuclear bombs. Reliance on the total weapon, to be sure, poses an awful threat against an aggressor. But the aggressor just might calculate that in view of the risks the total weapon would not be used.

Costly as conventional arms may be and much as the peoples of the world are weary of paying for them when there is so much more useful work that ought to be done, they should be maintained until the world finds more civilized ways of resolving disputes. Nuclear bombs or nothing is altogether too risky a gamble to get into.

CRISIS IN AMERICA

HON. OTTO E. PASSMAN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 20, 1969

Mr. PASSMAN. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following:

[From the West Carroll (La.) Gazette, Nov. 6, 1969]

CRISIS IN AMERICA

Our hearts bleed to see this great nation, this land of ours, locked in the throes of civil disorder and racial strife, plagued by a war nobody wants, and weakened by moral vissicitudes.

Sad days fall upon America, the Beautiful. Long shadows lie across the land, tarnishing, nay, obliterating the brilliance of her hope, her opportunity, her freedom and liberty. She battles for her life, locked in mortal combat, not with foreign enemies, but with her own self—her people. This proud, wonderful, bountiful land writhes in torture like a human whose own body vainly fights for its life against the onslaught of cells gone wild. We suffer a "cancer" of the body politic just as surely as some people now suffer that dread malady cancer.

This cancer eats at the heart and soul of America. And, more and more, this land of ours reveals the ravages of this affliction.

Where are her sons of courage and destiny who stood her in such good stead in years past? Where are her daughters who strode across this land side by side with their frontier mates to wrest from the wilderness a living (and a dying) and gave birth to stalwart new generations, (and a new, brighter land, in the process)?

Far too many latter day Americans occupy themselves in a chase after the dollar and a frantic quest after transient pleasure. They let slide civic duty; they seek a vapid popularity with their equals and their peers. Too many of us quail before the prospect of expressing righteous indignation. Affluence makes us squirm with guilt that we "have" and "they" don't. No one ever "gave" a person anything that counts except love and a sense of pride, plus the realization that you must work for what you get. Why then have we a guilt complex over our bounty when some n'er-do-well whines about what we, the majority, "owe" them?

America suffers from a body politic emasculated by guilt and mesmerized by an insane desire to flee from reality into the morass of pleasure seeking.

This country doesn't need a "good 5c cigar." It needs a new generation of people with guts to stand up and fight for principles; to transfix with steely eye the carping, whining, threatening dissidents and spineless apologists; to rise up in righteous indignation and preserve this land of ours, this America, this wonderful God-blessed bastion of liberty.

SENATE—*Friday, November 21, 1969*

The Senate met in executive session at 11 o'clock a.m. and was called to order by Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Lord, our God, our fathers trusted in Thee and were not confounded. Be to us in our day the guide and strength of old. Grant us the power to discern right from wrong, to separate the important from the unimportant, to distinguish between emotion and sound judgment, and in all things to show charity. Lead all who serve their country in this Chamber in the ways of truth and righteousness that all our doings, being ordered by Thy wisdom, may be righteous in Thy sight and set forward Thy kingdom.

In Thy holy name we pray. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate.

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., November 21, 1969.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. HARRY F. BYRD, JR., a Senator from the State of Virginia to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

Mr. BYRD of Virginia thereupon took the chair as Acting President pro tempore.

MESSAGE FROM THE HOUSE

As in legislative session, a message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 12964) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1970, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. ROONEY of New York, Mr. SIKES, Mr. SLACK, Mr. SMITH of Iowa, Mr. FLYNT, Mr. MAHON, Mr. BOW, Mr. LIPSCOMB, Mr. CEDERBERG, and Mr. ANDREWS of North Dakota were appointed managers at the conference on the part of the House.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13018) to authorize certain con-

struction at military installations, and for other purposes.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

H.R. 11612. An act making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1970, and for other purposes; and

H.R. 12829. An act to provide an extension of the interest equalization tax, and for other purposes.

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, November 20, 1969, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MANSFIELD. The understanding is that the morning business will be concluded not later than 11:30 a.m.

(Unless otherwise indicated the following proceedings, up to the conclusion of morning business, were held as in legislative session.)

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Senate proceed to the consideration of Calendars Nos. 543 and 544.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT OF THE DISTRICT OF COLUMBIA LEGAL AID ACT

The bill (S. 1421) to amend the District of Columbia Legal Aid Act was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1421

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the District of Columbia Legal Aid Act (D.C. Code, sec. 2–2205) is amended by deleting the following: "shall receive compensation of $16,000 per annum, and".

SEC. 2. Section 7 of the District of Columbia Legal Aid Act (D.C. Code, Sec. 2–2206) is amended by deleting the following: ", except the Director,".

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–547), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of S. 1421 is to amend the District of Columbia Legal Aid Act to delete the ceiling of $16,000 annual salary on the position of Director of the Legal Aid Agency.

The District of Columbia Legal Aid Agency was created in 1960 by the 86th Congress to provide legal representation of indigents in judicial proceedings in the District of Columbia. The act provided that the Trustees of the Agency should appoint a Director of the Agency who would receive an annual compensation of $16,000. The act further authorized the Director to employ professional and office staff at salaries following the scale for employees of similar qualifications and seniority in the Office of the U.S. attorney for the District of Columbia.

The ceiling of $16,000 on the Director's salary, as established by Congress, may have been realistic in 1960 but your committee feels that it is no longer a realistic figure. This salary restriction prevents the trustees from paying the Agency Director little more than the going rate for new law school graduates. The Director supervises a large, full-time staff of attorneys, investigators, and clerical help. He also handles a large share of the Agency's trial work, including important felony cases.

Under the statute the trustees are authorized to pay Agency employees, other than the Director, salaries comparable to those paid to employees of similar qualifications and seniority in the office of the U.S. attorney. A senior trial attorney in the Agency might well qualify for a salary of $20,000 and under the statute the trustees might well authorize such a salary. Morale and management difficulties, however, are invited if any employee is paid more than the Director.

The deletion of the ceiling on the Director's salary, however, does not affect the valuable proviso in the statute that salaries be comparable to those paid in the office of the U.S. attorney.

THE DISTRICT OF COLUMBIA PUBLIC DEFENDER ACT OF 1969

The Senate proceeded to consider the bill (S. 2602), the District of Columbia Public Defender Act of 1969, which had been reported from the Committee on the District of Columbia with amendments, on page 2, at the beginning of line 16, strike out "Representation may be furnished at any stage of a proceeding, including appellate, ancillary and collateral proceedings.", and, in lieu thereof, insert "Such representation shall be furnished at every stage of a proceeding—including ancillary, trial, appellate, and collateral proceedings—where the person to be represented has a right to counsel under the then prevailing law of the District of Columbia, and where representation for such person is not otherwise provided.".

On page 3, after line 22, strike out:

(b) Each trustee shall serve a three-year term of office. Upon the resignation or death of a trustee or the expiration of a term of office, the remaining trustees shall recommend to the Commissioner of the District of Columbia the names of persons qualified to fill the vacancy. Taking into consideration the recommendations of the trustees, the Commissioner shall appoint persons to fill vacancies on the Board. Any person appointed to fill an unexpired term shall serve for the balance of that term. The judges of the Federal courts in the District of Columbia and of the District of Columbia courts shall be ineligible to serve as trustees.

And, in lieu thereof, insert:

(b) Each trustee shall be appointed for a full term of three years or for the balance of an unexpired term, by a panel consisting of the chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, and of the Commissioner of the District of Columbia. Said panel shall be presided over by the Commissioner of the District of Columbia.

On page 4, line 19, after the word "trustee.", insert "Each appointee shall hold office, however, until his successor is appointed and qualifies."; and on page 7, line 2, after the word "chapter.", insert "Upon the approval of its Board of Trustees, moreover, the District of Columbia Public Defender Service is authorized to accept public grants and private contributions in the furtherance of its lawful objectives and purposes."; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The District of Columbia Public Defender Act of 1969."

SEC. 2. The Legal Aid Agency for the District of Columbia is redesignated the District of Columbia Public Defender Service (hereinafter called the Service).

SEC. 3. (a) The Service is authorized to represent persons in the District of Columbia who are financially unable to obtain adequate representation in each of the following categories:

(1) persons charged with an offense punishable by imprisonment for a term of six months, or more;

(2) persons charged with violating a condition of probation or parole;

(3) persons subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (Hospitalization of the Mentally Ill);

(4) persons for whom civil commitment is sought pursuant to title III of the Narcotic Addict Rehabilitation Act of 1966, 80 Stat. 1444 (42 U.S.C. sec. 3411, et seq.) or the provisions of the Hospital Treatment for Drug Addicts Act for the District of Columbia (67 Stat. 77), as amended (D.C. Code, sec. 24–601, et seq.);

(5) juveniles alleged to be delinquent or in need of supervision.

Such representation shall be furnished at every stage of a proceeding—including ancillary, trial, appellate, and collateral proceedings—where the person to be represented has a right to counsel under the then prevailing law of the District of Columbia, and where representation for such person is not otherwise provided. Not more than sixty percent of the persons annually determined to be financially unable to obtain adequate representation in the above categories may be represented by the Service, but the Service may furnish technical and other assist-

ance to private attorneys appointed to represent persons described in the above-enumerated categories. The Service shall determine the best practicable allocation of its staff personnel to the courts where it furnishes representation.

(b) The Service is authorized to cooperate with the courts in establishing an effective and adequate system for appointment of private attorneys to represent persons specified in subsection (a), but the courts shall have final responsiiblity for the appointment system. The Service shall report to the courts at least quarterly on matters relating to the operation of the appointment system and shall consult with the courts on the need for modifications and improvements.

(c) Upon approval of its Board of Trustees, the Service may perform such other functions as are necessary and appropriate to the duties described above.

SEC. 4. (a) The Service shall be governed by a Board of Trustees composed of seven members. The Board of Trustees shall establish general policy for the Service but shall not direct the conduct of particular cases.

(b) Each trustee shall be appointed for a full term of three years or for the balance of an unexpired term, by a panel consisting of the chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, and of the Commissioner of the District of Columbia. Said panel shall be presided over by the Commissioner of the District of Columbia.

No person shall serve more than two consecutive full three-year terms as a trustee. Each appointee shall hold office, however, until his successor is appointed and qualifies.

(c) The trustees of the Legal Aid Agency for the District of Columbia in office on the effective date of this Act shall serve the unexpired portions of their terms as trustees of the District of Columbia Public Defender Service.

(d) For the purposes of any action brought against the trustees of the Service, the trustees are employees of the District of Columbia.

SEC. 5. The Board of Trustees shall appoint a Director and Deputy Director of the Service, each of whom shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board of Trustees may prescribe. The Deputy Director shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. The Board of Trustees shall fix the compensation to be paid to the Director and the Deputy Director, without regard to chapter 51 and subchapter 3 of chapter 53 of title 5, United States Code, but compensation for the Director shall not exceed the maximum rate provided for GS–18 and for the Deputy Director the maximum rate provided for GS–17, in section 5332 of title 5, United States Code.

SEC. 6. The Director shall employ a staff of attorneys, clerical, and other personnel necessary to provide adequate and effective defense services. The Director shall make assignments of the personnel of the Service. The salaries of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director, without regard to chapter 51 and subchapter 3 of chapter 53 of title 5 of the United States Code, but shall not exceed the salaries which may be paid to persons of similar qualifications and experience in the Office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

SEC. 7. No attorney employed by the Service shall engage in the private practice of law or receive a fee for representing any person.

SEC. 8. (a) The Board of Trustees of the Service shall submit a fiscal year report of the Service's operations to the Congress of the United States, to the chief judges of the Federal courts in the District of Columbia and of the District of Columbia courts, and to the Commissioner of the District of Columbia. The report shall include a statement of the financial condition of the Service and a summary of services performed during the year.

(b) The Board of Trustees shall annually arrange for an independent audit to be prepared by a certified public accountant or by a designee of the Administrative Office of the United States Courts.

SEC. 9. For the purpose of carrying out the provisions of this chapter, there is authorized to be appropriated to the District of Columbia for each fiscal year, out of any moneys in the Treasury to the credit of the District of Columbia, such sums as may be necessary to implement the purposes of this chapter. Upon the approval of its Board of Trustees, moreover, the District of Columbia Public Defender Service is authorized to accept public grants and private contributions in the furtherance of its lawful objectives and purposes.

SEC. 10. All employees of the Legal Aid Agency for the District of Columbia on the effective date of this Act shall be deemed to be employees of the District of Columbia Public Defender Service and shall be entitled to the same compensation and benefits as they are entitled to as employees of the Legal Aid Agency for the District of Columbia.

SEC. 11. The Act of June 27, 1960 (74 Stat. 229) (D.C. Code, sec. 2–2201 to 2–2210) is hereby repealed.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–548), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of this legislation is to convert the existing pilot project Legal Aid Agency in the District of Columbia into a full-fledged public defender program.

The Public Defender Service established by this bill would help provide legal representation to defendants, in criminal cases who are financially unable to obtain adequate counsel; would expedite criminal trials by providing experienced counsel in such cases; and would assist the private bar and aid the courts in establishing an adequate system for the appointment of private counsel in appropriate cases.

NEED FOR THE LEGISLATION

This bill is part of the President's program to reduce crime in the National Capital. In recommending this legislation on January 31 in his message on crime in the District of Columbia the President said:

"The recent bail reform hearings before the Senate Judiciary Subcommittee on Constitutional Rights have emphasized the important contributions skilled defense counsel can make toward expediting criminal trials. Too often, inexperienced lawyers who are appointed to represent indigent defendants complicate and delay the trial process by their unfamiliarity with the law and criminal practice. Experience has shown that professional public defenders, on the other hand, not only better safeguard the rights of defendants, but also speed the process of justice."

The U.S. Constitution guarantees representation by competent counsel to all defendants in serious criminal cases. Where a defendant cannot afford such counsel, it must be supplied, at Government expense, from a public agency or the private bar. Experience in the District of Columbia indicates that the private bar alone cannot meet this need, and that the existing public agency, the District of Columbia Legal Aid Agency, must also be expanded to meet the growing criminal caseload.

The Legal Aid Agency was created by Congress in 1960. It was a small organization with capacity to represent only a limited number of defendants. Essentially, it was an experiment—the only Federal public defender office in the Nation.

In 1960, the organization had four lawyers, two investigators, and an appropriation of $100,000. Now it has 22 lawyers, six investigators and appropriations of about $250,000.

This increase in size, however, has been inadequate to meet the National Capital crime crisis. The Agency still represents only about 10 percent of the indicted defendants. Like so many other units of the criminal justice system, it must both expand its capacity and undertake new roles.

The nearly total reliance on private practitioners to represent indigent defendants must be reduced. Developments in the criminal law have made it increasingly difficult for the private practitioner to effectively and adequately handle criminal cases on an ad hoc basis. The growing complexity of the criminal law requires specialists who are regularly engaged in this field of law. Further, the dramatic rise in the number of criminal cases has placed an intolerable burden on the private bar which has over the years given great service to indigent defendants.

The District of Columbia Crime Commission took cognizance of this situation in 1966 and commented:

"In view of the increasing case volume and new requirements for legal assistance, the Commission recommends that services of private counsel be supplemented by an expanded public defender system in the District of Columbia. Public defenders can render better and more economical legal assistance in several respects. Dependence on counsel appointed from the private bar is unrealistic and impractical in certain stages of a criminal proceeding. The District has already experienced difficulty in utilizing private counsel at stationhouse interrogations. Similarly, in the court of general sessions an attorney must be physically present to receive an assignment, a requirement difficult for many members of the bar to meet. A recent American Bar Foundation survey concluded that the costs of financing a defender system in large cities were generally less than the costs of an assigned counsel system."

As the criminal process grows more complex and criminal cases grow more protracted, consuming more and more time of the criminal justice system, it becomes urgently necessary that the available time be spent as efficiently as possible. A competent public defender's office is imperative to the expeditious administration of criminal justice.

S. 2602 converts the existing District of Columbia Legal Aid Agency into a full-fledged Public Defender Service with (1) authority to represent up to 60 percent of all eligible adult and juvenile defendants, and (2) a role in developing a system of adequate representation for the remaining 40 percent.

PRINCIPAL FEATURES OF THE BILL

Provisions for representation

The proposed legislation authorizes the Public Defender Service to represent up to

60 percent of all persons who are unable to obtain adequate representation. Such persons must be involved, however, in one of the following five classes of cases:

1. *Criminal cases where the offense is punishable by at least 6 months imprisonment.*—Presently, Legal Aid represents only if the maximum penalty is a year. Changing to a 6-month-penalty criterion adds relatively few cases but would put public defender services on the same basis as those under the Criminal Justice Act.

2. *Cases in which a violation of probation or parole is charged.*—This is an expansion of service made necessary by the Supreme Court decision in *Mempa* v. *Rhay*, which extended the right to counsel to probation revocation proceedings.

3. *Cases in which civil commitment is sought pursuant to title 21 of the District of Columbia Code.*—This allows the Service to represent persons being committed on mental health grounds as well as those seeking release. The Agency has been supplying services in this area.

4. *Cases in which civil commitment of a narcotic addict is sought.*—Under title III of the Narcotics Addict Rehabilitation Act suspected addicts are entitled to the assistance of counsel when civil commitment is sought. The Service should assume part of this representation as well as representation of suspected addicts facing civil commitment under the analogous provisions of the District of Columbia Code.

5. *Cases in which juvenile delinquency or "being a juvenile in need of supervision" is alleged.*—This allows the Service to represent juveniles charged with law violations as well as those who, though not charged with a criminal act, face the possibility of a penal-type disposition.

Cooperation with private bar

The Public Defender Act specifically authorizes the Service to assist the private bar in representing the remaining 40 percent of the criminal cases where the defendant is unable to obtain adequate representation. As in the past, this means supplying the private bar with research memoranda, information on recent developments, assistance in investigations, and so forth.

Further, the Service is directed to cooperate with the court in establishing an adequate system for appointment of private counsel. This provision will permit the Service to respond to the findings of the 1969 District of Columbia Judicial Conference. That Conference fully developed the inadequacies of a present private appointment system and considered new methods of appointment which would include coordination by a unit like the Defender Service.

This section is specific in its provision that the courts shall have final responsibility for the appointment of counsel.

Administration and staff

The Public Defender Service Act places general policy supervision of the Service in a board of trustees. This is similar to the existing method of supervising the Legal Aid Agency.

Daily supervision of the Service and all matters relating to the handling of specific cases lies with the Director of the Service. The proposed legislation increases salary for the Director to a GS–18 level (eliminating the present ceiling of $16,000) and makes staff salaries comparable to salaries of assistant U.S. attorneys.

Combined with appropriation bills now pending before Congress, these provisions should permit the Service to attract and retain competent attorneys. It is anticipated that the Service will grow to an organization of 50 attorneys plus additional supporting personnel.

Costs

In its fiscal year 1970 budget, the Legal Aid Agency is requesting an appropriation of $770,000. The Department of Justice estimates that, once in full operation, the Public Defender Service authorized by this bill will require appropriations annually at $1,250,000.

SIXTH ANNIVERSARY OF THE DEATH OF PRESIDENT JOHN F. KENNEDY

Mr. MANSFIELD. Mr. President, 6 years ago tomorrow, a President of the United States was assassinated. I refer to the late John F. Kennedy—a colleague of ours in this body and also a colleague of some of us in the House of Representatives.

I did not want this occasion to pass without expressing my continuing sorrow that this tragedy struck this young man at a time when he was on the verge of greatness. His loss has been most seriously felt and not only by his family and by Congress. It has been felt and felt deeply by the Nation as a whole.

So I rise at this time to pay tribute to the accomplishments that marked his all too brief term in office. I rise as well to renew my personal dedication; a dedication to the ideals for which John Kennedy stood and to the goals that he sought.

We still miss John F. Kennedy. We shall go on missing him because what he did and the way he did it, what he sought for this Nation and the way he sought it—all will remain as giant monuments to his tenure in office as the 35th President of the United States and as inspiration to the generations to come.

Mr. SCOTT. Mr. President, when one is struck down in virtual youth, as was our late colleague John F. Kennedy, the tragedy implicit in that circumstance was a shock felt not only by the American people but by the people of all the world as well.

In my travels in Europe, Asia, and Africa, I found that the man in the street felt that sadness of loss and deprivation fully as much as the American people did. The line which formed in Wellington, New Zealand, to sign the book of condolences at the American Embassy was the greatest crowd which ever had appeared on any similar public occasion. People whom one met in Yugoslavia or England or Ireland or Germany expressed the same feelings.

All of us who travel know that the finest evidence of friendship we could tender to the people of other nations was the Kennedy half dollar, and to pass that facsimile of the portrait of the late President to someone was to establish an instant bond of fellowship and of compassion and of recognition that this man personified many of the dreams and aspirations of the world. The loss is still felt by all of us, as are all the tragedies that have beset this star-crossed family.

So I join in noting the sad anniversary of this dreadful incident, and I join with the distinguished majority leader in again expressing the common sadness of mankind that such an occurrence would deprive us of the talents and of the hope which rested in him when this happened.

MILITARY CONSTRUCTION AUTHORIZATION BILL, 1970—CONFERENCE REPORT

Mr. JACKSON. Mr. President, as in legislative session, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13018) to authorize certain construction at military installations, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of November 20, 1969, pp. 35232–35240, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report.

There being no objection, the Senate proceeded to consider the report.

Mr. JACKSON. Mr. President, I move the adoption of the conference report on the military construction authorization bill for fiscal year 1970 and in connection therewith I have a brief statement I should like to make.

The report was signed by all the conferees on the part of the House of Representatives and the Senate, and has now been agreed to by the House. I believe the end result is an improvement on the original product of either House. The bill, as agreed to in conference, provides a total new authority of $1,626,920,000 and an increase in prior years authority of $23,677,000, or a total authority of $1,650,597,000, which is $266,419,000 below the departmental request. This is a percentage decrease of about 14 percent which I consider to be a very substantial reduction in a rather austere bill.

As an indication that the Senate position prevailed in most instances, there were some 200 items in dispute and the Senate position prevailed in about 80 percent of them.

Now, Mr. President, there are a few items I would like to mention. It is to be recalled that the Marine Corps had requested authority to acquire a small amount of real estate in the southeast section of the city adjacent to the Marine barracks to permit them to expand the barracks. Although the Senate committee is well aware of the need to expand the barracks, the request was deferred, primarily because if approved, it would result in the displacing of several families now residing in homes on the property. I am pleased to state that the Senate position prevailed and the House conferees agreed to the deferral of this proposal until the fiscal year 1971 authorization bill to afford the proper officials of the Department of Defense to work with the local authorities and the community in finding housing for those persons who will be displaced. I might add that I have already called this matter to the attention of the Secretary of Defense.

Another matter of considerable interest in which the Senate position pre-

vailed was the deletion of section 708 of the House-passed bill which sought to prohibit interfering with, obstructing, or impeding military and Defense affairs by picketing or parading in the vicinity of the Pentagon. The Senate conferees had considerable doubt as to the constitutionality and the desirability of the proposed provision. The conferees did agree, however, that there is a requirement for a full report to be made to the Congress with respect to the adequacy of laws which seek to prevent the unlawful interruption of the decisionmaking process in national security affairs and in other vital areas of our national defense. The Secretary of Defense and the Attorney General are being called upon to report to the Congress in this regard.

Finally, I should like to mention another matter I consider to be of considerable importance which was the Senate committee's efforts to perfect legislation designed to reduce overruns in the field of military construction and induce the Departments through better management to provide better cost estimates and reduce the cost of design, inspection and overhead. I think I can state that the House conferees fully share our views in this regard and readily accepted sections 703 and 704 of the bill as it passed the Senate which were designed to produce the results indicated.

Mr. THURMOND. Mr. President, as the ranking Senate Republican on the fiscal year 1970 military construction bill, I am pleased to report that the decisions of the Senate-House conference should serve well the Nation's defense structure.

The conference met and elected the distinguished Senator from Washington (Mr. JACKSON) as chairman. He provided able leadership in presenting the Senate position before the conference.

In my opinion the conference reached sound conclusions which will result in wise growth and maintenance of our military capability. Fortunately, it was possible to accomplish this goal and at the same time make some reductions in expenditures.

Mr. President, all of the conferees exhibited a spirit of cooperation and willingness to meet each other halfway in settling the differences between the two bills and I am pleased to give my support to the conference report.

Mr. JACKSON. Mr. President, I move that the conference report be agreed to.

The motion was agreed to.

VICE PRESIDENT AGNEW AND THE NEWS MEDIA

Mr. DOLE. Mr. President, I listened with great interest last evening to the thoughtful address of Vice President SPIRO AGNEW in Montgomery, Ala.

He repeated his opposition to censorship in any form and indicated we have censorship now, imposed by a little fraternity of news commentators and analysts having similar social and political views.

As I read and later listened to his speech, I concluded the Vice President was again alerting the American people to weigh carefully the words of those who for too long have attempted to mold public opinion their way.

Strong, independent voices have been stilled in this country and, therefore, it is refreshing to have the Vice President speaking out. It seems strange that those who so sharply criticize his right to dissent are generally those who publicly espouse and, in some cases, promote it.

The majority of Americans will be forever grateful to the Vice President because he is in earnest; he will not equivocate, he will not excuse, he will not retreat, and above all, he will be heard.

I ask unanimous consent to insert the Vice President's speech in the RECORD at this point.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

ADDRESS BY THE VICE PRESIDENT

One week ago tonight I flew out to Des Moines, Iowa, and exercised my right to dissent.

There has been some criticism of what I had to say out there.

Let me give you a sampling.

One Congressman charged me with, and I quote, "A creeping socialistic scheme against the free enterprise broadcast industry." That is the first time in my memory anybody ever accused Ted Agnew of entertaining socialist ideas.

On Monday, largely because of this address, Mr. Humphrey charged the Nixon Administration with a "calculated attack" on the right of dissent and on the media today. Yet, it is widely known that Mr. Humphrey himself believes deeply that unfair coverage of the Democratic Convention in Chicago, by the same media, contributed to his defeat in November. Now, his wounds are apparently healed, and he casts his lot with those who were questioning his own political courage a year ago. But let us leave Mr. Humphrey to his own conscience. America already has too many politicians who would rather switch than fight.

Others charged that my purpose was to stifle dissent in this country. Nonsense. The expression of my views has produced enough rugged dissent in the last week to wear out a whole covey of commentators and columnists.

One critic charged that the speech was "disgraceful, ignorant and base," that it "leads us as a nation into an ugly era of the most fearsome suppression and intimidation." One national commentator, whose name is known to everyone in this room, said "I hesitate to get into the gutter with this guy." Another commentator charges that it was "one of the most sinister speeches I have ever heard made by a public official." The President of one network said it was an "unprecedented attempt to intimidate a news medium which depends for its existence upon government licenses." The President of another charged me with "an appeal to prejudice," and said it was evident that I would prefer the kind of television "that would be subservient to whatever political group happened to be in authority at the time."

And they say *I* have a thin skin.

Here are classic examples of overreaction. These attacks do not address themselves to the questions I have raised. In fairness, others—the majority of critics and commentators—did take up the main thrust of my address. And if the debate they have engaged in continues, our goal will surely be reached—a thorough self-examination by the networks of their own policies—and perhaps prejudices. That was my objective then; it is my objective now.

Now, let me repeat to you the thrust of my remarks the other night, and make some new points and raise some new issues.

I am opposed to censorship of television or the press in any form. I don't care whether censorship is imposed by government or whether it results from management in the choice and the presentation of the news by a little fraternity having similar social and political views. I am against censorship in all forms.

But a broader spectrum of national opinion *should* be represented among the commentators of the network news. Men who can articulate other points of view *should* be brought forward.

And a high wall of separation *should* be raised between what is news and what is commentary.

And the American people *should* be made aware of the trend toward the monopolization of the great public information vehicles and the concentration of more and more power over public opinion in fewer and fewer hands.

Should a conglomerate be formed that tied together a shoe company with a shirt company, some voice will rise up righteously to say that this is a great danger to the economy; and that the conglomerate ought to be broken up.

But a single company, in the Nation's Capital, holds control of the largest newspaper in Washington, D.C., *and* one of the four major television stations, *and* an all-news radio station, *and* one of the three major national news magazines—all grinding out the same editorial line—and this is not a subject you have seen debated on the editorial pages of the *Washington Post* or the *New York Times*.

For the purpose of clarity, before my thoughts are obliterated in the smoking typewriters of my friends in Washington and New York, let me emphasize I am not recommending the dismemberment of the Washington Post Company. I am merely pointing out that the public should be aware that these four powerful voices hearken to the same master.

I am merely raising these questions so that the American people will become aware of—and think of the implications of—the growing monopolization of the voices of public opinion on which we all depend—for our knowledge and for the basis of our views.

When the *Washington Times-Herald* died in the Nation's Capital, that was a political tragedy; and when the *New York Journal-American*, the *New York World-Telegram and Sun*, the *New York Mirror* and the *New York Herald-Tribune* all collapsed within this decade, that was a great, great political tragedy for the people of New York. The *New York Times* was a better newspaper when they were alive than it is now that they are gone.

What has happened in the city of New York has happened in other great cities in America.

Many, many strong independent voices have been stilled in this country in recent years. Lacking the vigor of competition, some of those that have survived have, let us face it, grown fat and irresponsible.

I offer an example. When 300 Congressmen and 59 Senators signed a letter endorsing the President's policy in Vietnam it was news—big news. Even the *Washington Post* and the *Baltimore Sun*—scarcely house organs of the Nixon Administration—placed it prominently on the front page.

Yet the next morning the *New York Times*, which considers itself America's paper of record, did not carry a word. Why?

If a theology student in Iowa should get up at a PTA luncheon in Sioux City and attack the President's Vietnam policy, my guess is that you would probably find it reported somewhere the next morning in the *New York Times*. But when Congressmen endorse the President's Vietnam policy, the

next morning it is apparently not considered news fit to print.

Just this Tuesday, when the Pope, the Spiritual Leader of half a billion Roman Catholics applauded the President's efforts to end the war in Vietnam, and endorsed the way he was proceeding—that news was on Page 11 of the *New York Times*. But the same day, a report about some burglars who broke into a souvenir shop at St. Peters and stole $9,000 worth of stamps and currency—that story made Page 3. How's that for news judgment?

A few weeks ago here in the South, I expressed my views about street and campus demonstrations. Here is how the New York Times responded:

"He," (that's me) "lambasted the nation's youth in sweeping and ignorant generalizations, when it is clear to all perceptive observers that American youth today is far more imbued with idealism, a sense of service and a deep humanitarianism than any generation in recent history, including particularly Mr. Agnew's (generation)."

That seems a peculiar slur on a generation that brought America out of the Great Depression without resorting to the extremes of either fascism or Communism. That seems a strange thing to say about an entire generation that helped to provide greater material blessings and personal freedom—out of that Depression—for more people than any other nation in history. We have not finished the task by any means—but we are still on the job.

Just as millions of young Americans in this generation have shown valor and courage and heroism in fighting the longest and least popular war in our history—so it was the young men of my generation who went ashore at Normandy under Eisenhower and with McArthur into the Philippines.

Yes, my generation, like the current generation, made its own share of great mistakes and blunders. Among other things, we put too much confidence in Stalin and not enough in Winston Churchill.

But whatever freedom exists today in Western Europe and Japan exists because hundreds of thousands of young men in my generation are lying in graves in North Africa and France and Korea and a score of islands in the Western Pacific.

This might not be considered enough of a "sense of service" or a "deep humanitarianism" for the *"perceptive critics"* who write editorials for the New York Times, but its good enough for me; and I am content to let history be the judge.

Now, let me talk briefly about this younger generation. I have not and do not condemn this generation of young Americans. Like Edmund Burke, I would not know how to "draw up an indictment against a whole people." They are our sons and daughters. They contain in their numbers many gifted, idealistic and courageous young men and women.

But they also list in their numbers an arrogant few who march under the flags and portraits of dictators, who intimidate and harass university professors, who use gutter obscenities to shout down speakers with whom they disagree, who openly profess their belief in the efficacy of violence in a democratic society.

The proceeding generation had its own breed of losers—and our generation dealt with them through our courts, our laws and our system. The challenge now is for the new generation to put their own house in order.

Today, Dr. Sydney Hook writes of "Storm Troopers" on the campus; that "fanaticism seems to be in the saddle." Arnold Beichman writes of "young Jacobins" in our schools who "have cut down university administrators, forced curriculum changes, halted classes, closed campuses and set a nationwide chill of fear through the university establishment." Walter Laqueur writes in *commentary* that "the cultural and political idiocies perpetrated with impunity in this permissive age have gone clearly beyond the borders of what is acceptable for any society, however liberally it may be constructed."

George Kennan has devoted a brief, cogent and alarming book to the inherent dangers of what is taking place in our society and in our universities. Irving Kristol writes that our "radical students . . . find it possible to be genuinely heartsick at the injustice and brutalities of American society, while blandly approving of injustice and brutality committed in the name of 'the revolution'."

These are not names drawn at random from the letterhead of an Agnew-for-Vice-President Committee.

These are men more eloquent and erudite than I. They raise questions that I have tried to raise.

For among this generation of Americans there are hundreds who have burned their draft cards and scores who have deserted to Canada and Sweden to sit out the war. To some Americans, a small minority, these are the true young men of conscience in the coming generation. Voices are and will be raised in the Congress and beyond asking that amnesty should be provided for "these young and misguided American boys." And they will be coming home one day from Sweden and Canada, and from a small minority they will get a heroe's welcome.

They are not our heroes. Many of our heroes will not be coming home; some are coming back in hospital ships, without limbs or eyes, with scars they shall carry the rest of their lives.

Having witnessed firsthand the quiet courage of wives and parents receiving posthumously for their heroes Congressional Medals of Honor, how am I to react when people say, "Stop speaking out, Mr. Agnew, stop raising your voice."

Should I remain silent while what these heroes have done is vilified by some as "a dirty and immoral war" and criticized by others as no more than a war brought on by the chauvinistic, anti-communism of Presidents Kennedy, Johnson and Nixon?

These young men made heavy sacrifices so that a developing people on the rim of Asia might have a chance for freedom that they will not have if the ruthless men who rule in Hanoi should ever rule over Saigon. What is dirty or immoral about that?

One magazine this week said that I will go down as the "great polarizer" in American politics. Yet. when that large group of young Americans marched up Pennsylvania and Constitution Avenues last week—they sought to polarize the American people against the President's policy in Vietnam. And that was their right.

And so it is my right, and my duty, to stand up and speak out for the values in which I believe. How can you ask the man in the street in this country to stand up for what he believes if his own elected leaders weasel and cringe.

It is not an easy thing to wake up each morning to learn that some prominent man or institution has implied that you are a bigot, a racist or a fool.

I am not asking any immunity from criticism. That is the lot of the man in politics; we would have it no other way in this Democratic Society.

But my political and journalistic adversaries sometimes seem to be asking something more—that I circumscribe my rhetorical freedom, while they place no restrictions on theirs.

As president Kennedy once observed in a far more serious matter, that is like offering an apple for an orchard.

We do not accept those terms for continuing the national dialogue. The day when the network commentators and even gentlemen of the *New York Times* enjoyed a form of diplomatic immunity from comment and criticism of what they said—that day is over.

Just as a politician's words—wise and foolish—are dutifully recorded by the press and television to be thrown up to him at the appropriate time, so their words should likewise be recorded and likewise recalled.

When they go beyond fair comment and criticism they will be called upon to defend their statements and their positions just as we must defend ours. And when their criticism becomes excessive or unjust, we shall invite them down from their ivory towers to enjoy the rough and tumble of the public debate.

I do not seek to intimidate the press, the networks or anyone else from speaking out. But the time for blind acceptance of their opinions is past. And the time for naive belief in their neutrality is gone.

But, as to the future, all of us could do worse than take as our own the motto of William Lloyd Garrison who said: "I am in earnest. I will not equivocate. I will not excuse. I will not retreat a single inch. And I will be heard."

VICE PRESIDENT AGNEW'S SPEECH ON THE NEWS MEDIA

Mr. DODD. Mr. President, once again the Nation is indebted to Vice President AGNEW for having the courage to challenge the bosses of our communications media.

Once again there is sure to be an outcry that the Vice President is attempting to curb the freedom of the press, to intimidate the press.

But what the Vice President is really attempting to do is to curb the excesses and abuses that have been perpetrated in the name of freedom of the press.

The Vice President is dead right when he says that it makes no difference "whether censorship is imposed by Government or whether it results from management in the choice and presentation of the news by a little fraternity having simliar social and political views."

The power of the press in a free society is awesome.

A byline in the New York Times, for example, can be infinitely more important in terms of swaying public opinion and influencing Government policy than a dozen speeches on the floor of the U.S. Senate.

In more than one situation this power has been used by the New York Times, in particular, to help overthrow friendly governments or to help promote the emergence of governments unfriendly to American interests.

I intend to speak at greater length on this subject in the Senate next week.

But, meanwhile, I hope that the Vice President's speech will be widely read and that it will promote the long overdue discussion on the power of the press and the abuses made possible by this vast concentration of power.

Mr. President, in the case of television and radio we at least can have some recourse to the Federal Communications Commission.

In the case of the press we have no way of dealing with abuses. Maybe it is time for a real first-class inquiry into the press situation.

Distortions of the news, suppressions

of the news, and coloration of the news is widespread in some of the very newspapers and magazines that piously preach about the ethics of others. I think that it is high time we look at the ethics of the press.

Mr. President, I ask unanimous consent to have printed in the RECORD the speech which the Vice President gave last night in Montgomery, Ala.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

ADDRESS BY THE VICE PRESIDENT

One week ago tonight I flew out to Des Moines, Iowa, and exercised my right to dissent.

There has been some criticism of what I had to say out there.

Let me give you a sampling.

One Congressman charged me with, and I quote, "A creeping socialistic scheme against the free enterprise broadcast industry." That is the first time in my memory anybody ever accused Ted Agnew of entertaining socialist ideas.

On Monday, largely because of this address, Mr. Humphrey charged the Nixon Administration with a "calculated attack" on the right of dissent and on the media today. Yet, it is widely known that Mr. Humphrey himself believes deeply that unfair coverage of the Democratic Convention in Chicago, by the same media, contributed to his defeat in November. Now, his wounds are apparently healed, and he casts his lot with those who were questioning his own political courage a year ago. But let us leave Mr. Humphrey to his own conscience. America already has too many politicians who would rather switch than fight.

Others charged that my purpose was to stifle dissent in this country. Nonsense. The expression of my views has produced enough rugged dissent in the last week to wear out a whole covey of commentators and columnists.

One critic charged that the speech was "disgraceful, ignorant and base," that it "leads us as a nation into an ugly era of the most fearsome suppression and intimidation." One national commentator, whose name is known to everyone in this room, said "I hesitate to get into the gutter with this guy." Another commentator charges that it was "One of the most sinister speeches I have ever heard made by a public official." The President of one network said it was an "unprecedented attempt to intimidate a news medium which depends for its existence upon government licenses." The President of another charged me with "an appeal to prejudice," and said it was evident that I would prefer the kind of television "that would be subservient to whatever political group happened to be in authority at the time."

And they say *I* have a thin skin.

Here are classic examples of overreaction. These attacks do not address themselves to the questions I have raised. In fairness, others—the majority of critics and commentators—did take up the main thrust of my address. And if the debate they have engaged in continues, our goal will surely be reached—a thorough self-examination by the networks of their own policies—and perhaps prejudices. That was my objective then; it is my objective now.

Now, let me repeat to you the thrust of my remarks the other night, and make some new points and raise some new issues.

I am opposed to censorship of television or the press in any form. I don't care whether censorship is imposed by government or whether it results from management in the choice and the presentation of the news by a little fraternity having similar social and political views. I am against censorship in all forms.

But a broader spectrum of national opinion *should* be represented among the commentators of the network news. Men who can articulate other points of view *should* be brought forward.

And a high wall of separation *should* be raised between what is news and what is commentary.

And the American people *should* be made aware of the trend toward the monopolization of the great public information vehicles and the concentration of more and more power over public opinion in fewer and fewer hands.

Should a conglomerate be formed that tied together a shoe company with a shirt company, some voice will rise up righteously to say that this is a great danger to the economy; and that the conglomerate ought to be broken up.

But a single company, in the Nation's Capital, holds control of the largest newspaper in Washington D.C., *and* one of the four major television stations, *and* an all-news radio station, *and* one of the three major national news magazines—all grinding out the same editorial line—and this is not a subject you have seen debated on the editorial pages of the *Washington Post* or the *New York Times*.

For the purpose of clarity, before my thoughts are obliterated in the smoking typewriters of my friends in Washington and New York, let me emphasize I am not recommending the dismemberment of the Washington Post Company. I am merely pointing out that the public should be aware that these four powerful voices hearken to the same master.

I am merely raising these questions so that the American people will become aware of—and think of the implications of—the growing monopolization of the voices of public opinion on which we all depend—for our knowledge and for the basis of our views.

When the *Washington Times-Herald* died in the Nation's Capital, that was a political tragedy; and when the *New York Journal-American*, the *New York World-Telegram and Sun*, the *New York Mirror* and the *New York Herald-Tribune* all collapsed within this decade, that was a great, great political tragedy for the people of New York. The *New York Times* was a better newspaper when they were alive than it is now that they are gone.

What has happened in the city of New York has happened in other great cities in America.

Many, many strong independent voices have been stilled in this country in recent years. Lacking the vigor of competition, some of those that have survived have, let us face it, grown fat and irresponsible.

I offer an example. When 300 Congressmen and 59 Senators signed a letter endorsing the President's policy in Vietnam it was news—big news. Even the *Washington Post* and the *Baltimore Sun*—scarcely house organs of the Nixon Administration—placed it prominently on the front page.

Yet the next morning the *New York Times*, which considers itself America's paper of record, did not carry a word. Why?

If a theology student in Iowa should get up at a PTA luncheon in Sioux City and attack the President's Vietnam policy my guess is that you would probably find it reported somewhere the next morning in the *New York Times*. But when 300 Congressmen endorse the President's Vietnam policy, the next morning it is apparently not considered news fit to print.

Just this Tuesday, when the Pope, the Spiritual Leader of half a billion Roman Catholics applauded the President's efforts to end the war in Vietnam, and endorsed the way he was proceeding—that news was on Page 11 of the *New York Times*, But the same day, a report about some burglars who broke into a souvenir shop at St. Peters and stole $9,000 worth of stamps and currency—that story made Page 3. How's that for news judgment?

A few weeks ago here in the South, I expressed my views about street and campus demonstrations. Here is how the *New York Times* responded:

"He," (that's me) "lambasted the nation's youth in sweeping and ignorant generalizations, when it is clear to all perceptive observers that American youth today is far more imbued with idealism, a sense of service and a deep humanitarianism than any generation in recent history, including particularly Mr. Agnew's (generation)."

That seems a peculiar slur on a generation that brought America out of the Great Depression without resorting to the extremes of either fascism or Communism. That seems a strange thing to say about an entire generation that helped to provide greater material blessings and personal freedom—out of that Depression—for more people than any other nation in history. We are not finished the task by any means—but we are still on the job.

Just as millions of young Americans in this generation have shown valor and courage and heroism in fighting the longest and least popular war in our history—so it was the young men of my generation who went ashore at Normandy under Eisenhower and with MacArthur into the Philippines.

Yes, my generation, like the current generation, made its own share of great mistakes and blunders. Among other things, we put too much confidence in Stalin and not enough in Winston Churchill.

But whatever freedom exists today in Western Europe and Japan exists because hundreds of thousands of young men in my generation are lying in graves in North Africa and France and Korea and a score of islands in the Western Pacific.

This might not be considered enough of a "sense of service" or a "deep humanitarianism" for the "*perceptive critics*" who write editorials for the *New York Times*, but it's good enough for me; and I am content to let history be the judge.

Now, let me talk briefly about this younger generation. I have not and do not condemn this generation of young Americans. Like Edmund Burke, I would not know how to "draw up an indictment against a whole people." They are our sons and daughters. They contain in their numbers many gifted, idealistic and courageous young men and women.

But they also list in their numbers an arrogant few who march under the flags and portraits of dictators, who intimidate and harass university professors, who use gutter obscenities to shout down speakers with whom they disagree, who openly profess their belief in the efficacy of violence in a democratic society.

The preceding generation had its own breed of losers—and our generation dealt with them through our courts, our laws and our system. The challenge now is for the new generation to put their own house in order.

Today, Dr. Sydney Hook writes of "Storm Troopers" on the campus; that "fanaticism seems to be in the saddle." Arnold Beichman writes of "young Jacobins" in our schools who "have cut down university administrators, forced curriculum changes, halted classes, closed campuses and set a nationwide chill of fear through the university establishment." Walter Laqueur writes in *commentary* that "the cultural and political idiocies perpetrated with impunity in this permissive age have gone clearly beyond the borders of what is acceptable for any society, however liberally it may be constructed."

George Kennan has devoted a brief, cogent and alarming book to the inherent dangers of what is taking place in our society and in our universities. Irvin Kristol writes that

our "radical students . . . find it possible to be genuinely heartsick at the injustice and brutalities of American society, while blandly approving of injustice and brutality committed in the name of 'the revolution'."

These are not names drawn at random from the letterhead of an Agnew-for-Vice-President Committee.

These are men more eloquent and erudite than I. They raise questions that I have tried to raise.

For among this generation of Americans there are hundreds who have burned their draft cards and scores who have deserted to Canada and Sweden to sit out the war. To some Americans, a small minority, these are the true young men of conscience in the coming generation. Voices are and will be raised in the Congress and beyond asking that amnesty should be provided for "these young and misguided American boys." And they will be coming home one day from Sweden and Canada, and from a small minority they will get a heroes' welcome.

They are not our heroes. Many of our heroes will not be coming home; some are coming back in hospital ships, without limbs or eyes, with scars they shall carry the rest of their lives.

Having witnessed firsthand the quiet courage of wives and parents receiving posthumously for their heroes Congressional Medals of Honor, how am I to react when people say, "Stop speaking out, Mr. Agnew, stop raising your voice."

Should I remain silent while what these heroes have done is vilified by some as "a dirty and immoral war" and criticized by others as no more than a war brought on by the chauvinistic, anti-communism of Presidents Kennedy, Johnson and Nixon?

These young men made heavy sacrifices so that a developing people on the rim of Asia might have a chance for freedom that they will not have if the ruthless men who rule in Hanoi should ever rule over Saigon. What is dirty or immoral about that?

One magazine this week said that I will go down as the "great polarizer" in American politics. Yet, when that large group of young Americans marched up Pennsylvania and Constitution Avenues last week—they sought to polarize the American people against the President's policy in Vietnam. And that was their right.

And so it is my right, and my duty, to stand up and speak out for the values in which I believe. How can you ask the man in the street in this country to stand up for what he believes if his own elected leaders weasel and cringe.

It is not an easy thing to wake up each morning to learn that some prominent man or institution has implied that you are a bigot, a racist or a fool.

I am not asking any immunity from criticism. That is the lot of the man in politics; we would have it no other way in this Democratic Society.

But my political and journalistic adversaries sometimes seem to be asking something more—that I circumscribe my rhetorical freedom, while they place no restrictions on theirs.

As President Kennedy once observed in a far more serious matter, that is like offering an apple for an orchard.

We do not accept those terms for continuing the national dialogue. The day when the network commentators and even gentlemen of the *New York Times* enjoyed a form of diplomatic immunity from comment and criticism of what they said—that day is over.

Just as a politician's words—wise and foolish—are dutifully recorded by the press and television to be thrown up to him at the appropriate time, so their words should likewise be recorded and likewise recalled.

When they go beyond fair comment and criticism they will be called upon to defend their statements and their positions just as we must defend ours. And when their criticism becomes excessive or unjust, we shall invite them down from their ivory towers to enjoy the rough and tumble of the public debate.

I do not seek to intimidate the press, the networks or anyone else from speaking out. But the time for blind acceptance of their opinion is past. And the time for naive belief in their neutrality is gone.

But, as to the future, all of us could do worse than take as our own the motto of William Lloyd Garrison who said: "I am in earnest. I will not equivocate. I will not excuse. I will not retreat a single inch. And I will be heard."

APPRCVAL OF CHANGES IN THE SELECTIVE SERVICE SYSTEM

Mr. BYRD of Virginia. Mr. President, I am glad the Senate acted quickly to approve the changes in the Selective Service System recommended by President Nixon.

I think it is very important that the long period of uncertainty to which all young men have been subjected be removed. There is no reason why the young men of today should be subjected to 7 years of uncertainty.

When the bill becomes operative, it will mean that each young man, as he becomes 19 years of age, will be exposed to the possibility of being drafted to serve his Nation during that 1 year, and if during that year he has not been selected, then he will not then be called—except in an emergency.

Mr. President, I think it is appropriate and I think it would be a very much better system than we have been operating under in recent years. I think, too, it is desirable to try the random selection system which is provided for by the legislation enacted this week.

The Senate acted very quickly once this matter was brought from the House of Representatives to this body, and I think it will be in the national interest.

Mr. President, I have some figures I should like to have printed in the RECORD, but first let me say that during each of the past 4 years, 1 million young men of this Nation have been inducted into the armed services. Some have been voluntary enlistments and some have been inductees but, in any case, the total has been large.

For example, during the past 4 years, in 1966, there were 1,200,000 men inducted into the military services; in 1967, 1 million men; in 1968, 1 million men; and in 1969, 1 million men.

I ask unanimous consent to have printed in the RECORD the figures going back to 1960 on total military strength, and the initial entries into military service as inductees or enlistees.

There being no objection, the figures were ordered to be printed in the RECORD, as follows.

Total military strength

1960	2,500,000
1961	2,500,000
1962	2,800,000
1963	2,700,000
1964	2,700,000
1965	2,700,000
1966	3,100,000
1967	3,400,000
1968	3,500,000
1969	3,500,000

Initial entries into military service either as inductees or enlistees

1960	600,000
1961	600,000
1962	700,000
1963	600,000
1964	700,000
1965	600,000
1966	1,200,000
1967	1,000,000
1968	1,000,000
1969	1,000,000

VICE PRESIDENT AGNEW AND THE NEWS MEDIA

Mr. MANSFIELD. Mr. President, the distinguished Vice President of the United States, SPIRO AGNEW, delivered a speech in Des Moines, Iowa, a week ago, and in Montgomery, Ala., last evening.

On the first occasion, he lashed out against an individual, Mr. Averell Harriman, and a portion of the fourth estate; namely, the TV segment.

Last evening it was the turn of the press, with specific newspapers designated, a news magazine designated, and a radio and TV station designated.

The Vice President has the right to express his views just as we have the right to express our views in and out of this body.

I do not feel as keenly as the Vice President does about the various elements which comprise the fourth estate because I believe that they, as much as he, have a right to express their opinion on the editorial page and the right to report the news in the news section of the publications concerned.

I would hope that none of us would become so concerned that we felt we could not stand the heat once we reached the kitchen.

In politics, we have to anticipate a certain amount of heat. We have to expect a certain amount of criticism. It is my belief that there are newspapers and magazines, TV and radio programs, which could be found on the opposite side of those already mentioned.

Mr. President, newspapers, news magazines, radio and television stations have, on the whole, I believe, done a very competent and fair job in informing the American people of the issues of the day.

Insofar as the editorial pages are concerned, it is my understanding that that is where editors and others of like caliber are supposed to set forth their own personal opinions, and that is so recognized.

I like to recall, also, that there is in the Bill of Rights the first amendment to the Constitution, to the effect that not only shall there be freedom of religion and freedom to assemble peaceably, but also that there shall be free speech and a free press.

I can say that in all my years of public office I have never been quoted incorrectly. I have been misinterpreted, according to my lights, at times; and I think perhaps the reason for that is I did not speak or write as plainly as I should have.

But I do want to say that I hope we do not make a mountain out of this molehill which seems to be developing, and that we recognize that the Vice President has the right to make the statements he does, I hope we recognize as well that the press, the TV, the radio, and the

magazines do operate under the protection of the first amendment, as does every individual Senator and every individual citizen, and, of course, I would include the Vice President within the confines of the first amendment as well.

Thus, rather than create a situation which would tend to divide us more, I wish that the voices would be lowered, that we would seek to bring all our people together, and that we would face up to our common problems not on the basis of political feelings, not on the basis of personal dislike for what has been done, but on the basis of understanding that a democracy is a risky business which could well be one of its strengths. Indeed, a democracy comprises all kinds of opinions and if we are going to survive with the type of institutions with which we have been accustomed, we should recognize that the times are here to bring us all together, and to remember that above our personal feelings, or feelings of any party, it is the welfare and the security of the Republic which must at all times come first and foremost.

Accordingly, I would conclude, Mr. President, by expressing the hope again that we would all follow the advice of the President in his inaugural address, to lower our voices, get together, and try to work for the common good of this great Republic. The first amendment to the Constitution must not be suspended, the rights under it must not be diminished or those exercising these rights must not be intimidated. As I said, democracy is a risky business—and the first amendment illustrates that risk as well as its truest meaning and strength.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE COMMUNICATIONS, ETC.

The Acting President pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON CERTAIN PURCHASES AND CONTRACTS MADE BY THE U.S. COAST GUARD

A letter from the Acting Assistant Secretary for Administration, Department of Transportation, transmitting, pursuant to law, a report on purchases and contracts made by the U.S. Coast Guard under clause 11 of section 2304(a) of title 10 since April 30, 1969 (with an accompanying report); to the Committee on Commerce.

CONSUMER PROTECTION ACT OF 1969

A letter from the Attorney General, transmitting a draft of proposed legislation to amend the Federal Trade Commission Act to provide increased protection for consumers, and for other purposes (with accompanying papers); to the Committee on Commerce.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on effectiveness and administrative efficiency of the concentrated employment program under title IB of the Economic Opportunity Act of 1964, St. Louis, Mo., Department of Labor, dated November 20, 1969 (with an accompanying report); to the Committee on Government Operations.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A petition, signed by Clifford Luckey, and sundry other citizens of the State of California, praying for the enactment of tax reform legislation; ordered to lie on the table.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. LONG, from the Committee on Finance, with an amendment:

H.R. 13270. An act to reform the income tax laws (Rept. No. 91–552).

(The remarks of Mr. LONG when he submitted the report appear later in the RECORD under the appropriate heading.)

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. SCOTT:

S. 3166. A bill for the relief of Giuseppe Zito; and

S. 3167. A bill for the relief of Kimoko Ann Duke; to the Committee on the Judiciary.

(The remarks of Mr. SCOTT when he introduced the above bills appear later in the RECORD under the appropriate heading.)

By Mr. BROOKE:

S. 3168. A bill for the relief of Daniel H. Robbins; to the Committee on the Judiciary.

By Mr. PASTORE:

S. 3169. A bill to amend the Atomic Energy Act of 1954, as amended, and for other purposes; to the Joint Committee on Atomic Energy.

By Mr. TYDINGS:

S. 3170. A bill to amend section 8340 of title 5, United States Code, to provide a 5-percent increase in certain annuities; to the Committee on Post Office and Civil Service.

(The remarks of Mr. TYDINGS when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. HARTKE (for himself, Mr. BAYH, Mr. BIBLE, Mr. CANNON, Mr. EAGLETON, Mr. HARRIS, Mr. MCCARTHY, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH):

S. 3171. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968; to the Committee on the Judiciary.

(The remarks of Mr. HARTKE when he introduced the bill appear later in the RECORD under the appropriate heading.)

By Mr. MCGOVERN:

S. 3172. A bill for the relief of Paul Salerno; to the Committee on the Judiciary.

S. 3173. A bill to extend the time within which claims may be filed for credit with respect to gasoline used on farms; to the Committee on Finance.

(The remarks of Mr. MCGOVERN when he introduced the last above-mentioned bill appear later in the RECORD under the appropriate heading.)

By Mr. MCGOVERN (by request):

S. 3174. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Mississippi Sioux Indians in Indian Claims Commission dockets Nos. 142, 359–363, and for other purposes; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. MCGOVERN when he introduced the bill appear later in the RECORD under the appropriate heading.)

S. 3166 AND S. 3167—INTRODUCTION OF BILLS FOR THE RELIEF OF GIUSEPPE ZITO AND KIMOKO ANN DUKE

Mr. SCOTT. Mr. President, I introduce two private bills. This is not ordinarily the subject of a statement, as under our present rules these are to be introduced only by Members of the Senate. But I introduce two private bills, one for the relief of Giuseppe Zito and another for the relief of Kimoko Ann Duke.

I introduce them publicly because I have had my staff make a careful examination of the merits of this matter, and I am satisfied that they are meritorious, and I introduce them for appropriate reference.

The PRESIDING OFFICER. The bills will be received and appropriately referred.

The bills (S. 3166) for the relief of Giuseppe Zito and (S. 3167) for the relief of Kimoko Ann Duke, introduced by Mr. SCOTT, were received, read twice by their titles, and referred to the Committee on the Judiciary.

S. 3170—INTRODUCTION OF A BILL TO AMEND SECTION 8340 OF TITLE 5, UNITED STATES CODE, RELATING TO CERTAIN ANNUITIES

Mr. TYDINGS. Mr. President, it is obvious that the Department of Defense will be announcing numerous reduction in force statements for the balance of this fiscal year, it is imperative that we take every possible step to cushion the actions and reduce the hardships caused by such reductions. It is to that end that I introduce legislation to amend section 8340(b), of title 5 to extend the 5 percent cost-of-living adjustment which was available for a 2-day period and expired October 31, for a period of 60 days after the enactment of legislation I have proposed. I understand the proposal is consistent with recommendations by the Department of Defense and the Bureau of the Budget. Two days is certainly not an adequate period of time to make a decision involving a retirement after a lifetime of service. This was the situation facing prospective retirees on October 29, 1969. It would seem that if we wish career service employees to take an opportunity of early retirement and thus ease the stress of hardship by defense annuitants we should afford these prospective retirees a minimum of 60 days to make the decision.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3170) to amend section 8340 of title 5, United States Code, to provide a 5-percent increase in certain

annuities, introduced by Mr. TYDINGS, was received, read twice by its title, and referred to the Committee on Post Office and Civil Service.

S. 3171—INTRODUCTION OF A BILL TO AMEND THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Mr. HARTKE. Mr. President, I am today introducing for myself and Senators BAYH, BIBLE, CANNON, EAGLETON, MCCARTHY, TYDINGS, WILLIAMS of New Jersey, and YARBOROUGH a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968.

On September 23 of this year, the Federal Bureau of Investigation issued its latest crime statistics for the period January to June 1969. These statistics carry the same frightening message carried by other FBI reports in recent years, which is that violent crime and offenses against property continue to increase at an unprecedented rate in the cities, in the suburbs, and in the rural areas of our country. As a group, violent crimes increased 13 percent during this 6-month period when compared to the same period in 1968. Robbery was up 17 percent, forcible rape 15 percent, aggravated assault 10 percent, and murder 8 percent. Crimes against property rose 8 percent as a group. Taken individually, larceny involving amounts of $50 or more increased 17 percent, auto theft was up 9 percent, and burglary 3 percent.

This country is, in fact, fighting two wars today, the one in Southeast Asia and the other right here in this country. This latter conflict is the much talked about, but little acted upon, war on crime. Last year more than 12,000 persons lost their lives as a direct result of this domestic war—victims of a struggle which is in many ways more brutal and more bloody than the one in Vietnam. In 1968 this war, which day by day increases in its intensity, hospitalized 200,000 and produced property losses in excess of $1 billion.

Unlike Vietnam, where there is some hope that an honorable peace may be forthcoming, the situation here at home appears increasingly desperate. The forces of crime appear to be alarmingly close to victory over the forces of peace. If positive action is not taken—and taken soon—a crime crisis of unprecedented proportions will soon surely envelop this Nation.

Happily, we have the tools already at hand to meet effectively the forces of crime and eventually to defeat them. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 declared that the policy of the Congress is "to assist State and local governments in strengthening and improving law enforcement at every level by national assistance." Such assistance is in the form of planning and action grants to be distributed to the States by the Law Enforcement Assistance Administration, within the Department of Justice. If intelligently utilized, these grants can serve as an invaluable instrument in the fight against crime.

As originally conceived, these grants were to be distributed directly to those localities where the incidence of crime was highest. The local nature of the law enforcement effort was highlighted by President Johnson's Commission on Law Enforcement and Administration of Justice, in one of the most ambitious investigations of the crime problem ever undertaken. In their report of February 1967, entitled "The Challenge of Crime in a Free Society," the Commission stressed the importance of local participation and authority in the fight against crime.

The House, however, fearful that this direct grant approach would eventually lead to a federally controlled police force, voted for an amendment to title I, which created a block, rather than categorical approach, to grant distribution. By virtue of the House amendment, 85 percent of all available Federal funds would be distributed first to the States and then to the localities.

Here in the Senate, the Judiciary Committee, despite the House amendment, maintained the categorical approach to grant distribution. On the floor this approach was again challenged and ultimately defeated. By a vote of 48 to 29—CONGRESSIONAL RECORD, volume 114, part 11, page 14771—this body adopted an amendment which paralleled the House amendment by its impact, with the exception of a provision in the Senate version which required that a certain percentage of the funds be channeled automatically by State governuments to local governments. This change was viewed as necessary at the time in order to gain the support of those Senators who favored the original categorical approach and who feared that the cities would be slighted if an automatic pass-through provision were not provided. This formula, as developed in the Senate and later accepted by the House, provides that 40 percent of the funds allotted to the States for planning grants and 75 percent of the funds for action grants be funneled directly to units of local government, or combinations of local units, with the remainder going to the State government.

The Law Enforcement Assistant Administration—LEAA—in the Department of Justice has the responsibility of distributing the grant money authorized by Congress. Under the act each State, in order to be eligible for Federal funds, had to establish a State planning agency under the authority of the Governor. A provision for direct grants to localities was put in the act in case any State failed to set up a State planning agency. All States, however, made applications for funds and established planning agencies, thereby preventing local governments from invoking that option. As provided for in the act, 85 percent of the available Federal funds were allocated directly to the States according to their population, with the remaining 15 percent allocated by the LEAA, at its discretion.

To insure that this money would be made available to local governments without long and harmful delays, title I provides that States must apply for planning grants within 6 months after enactment of the statute and that States must then file a comprehensive law enforcement improvement plan within 6 months after approval of their planning grant. Every State jurisdiction was able to meet these deadlines, but not, as we shall see, without some serious damage to the caliber of the plans which were generally devised. The first phase of the program, the planning phase, received $19 million during fiscal year 1969. Another $29 million was appropriated for action grants for activities called for in the initial planning stage.

Several provisions in the act were designed to insure that local governments would not be overlooked in critical matters of planning and funding. In this regard, title I requires that State planning agencies "shall be representative of law enforcement agencies of the State and of the units of general local government within the State." It has been widely assumed that this provision would result in the appointment of public officials who would review the actions of the State's planning staff. The statute also specifically directs the States to take into account "the needs and requests of the units of general local government" and to "encourage local initiative." As shall be pointed out later, the majority of State planning agencies have not done this.

Also, the unfortunate slowness of some States in developing plans for distribution of funds to local governments presents a serious problem to these governments. For it is quite possible that if local governments do not receive planning funds in sufficient time to develop local plans or elements of the State plan, their needs may not be recognized in future action grants, since only the needs covered in the comprehensive State plan will be eligible for action grant assistance.

Moreover, the requirement that the States submit their individual plans within 6 months of their applications for funds has resulted in the formulation of plans which, in many instances, constitute little more than "shopping lists," rather than cohesive, long-range plans. For this reason, it is impossible to tell from many of the plans submitted whether the action programs which will proceed from these plans will further the purposes of the Safe Streets Act.

CRITICISM OF THE SAFE STREETS ACT

What I have said already indicates my belief that all is not well with title I of the Safe Streets Act. Defects in the planning process would appear to threaten seriously the future administration of the action grant program which was formally initiated with the start of this fiscal year. Certainly the ultimate success of title I is dependent upon the effectiveness of the action grants.

These doubts that I voice about the future of the program are shared by a number of organizations which have an immediate interest in the legislation. They are: The National League of Cities—NLC—the U.S. Conference of Mayors—USM—the Urban Coalition and Urban America Inc.; the National Association of Counties—NACO—and the National Governors Conference—GC.

In March of 1969, the National League of Cities published a very well-researched

critique of the block grant features of the LEAA program. The study included: First, a comprehensive analysis of 31 State planning grant applications selected at random; second, extensive comments from State municipal leagues and individual cities; and third, several direct contacts with State planning agency directors. This study concluded that:

The Safe Streets Act, as currently administered by LEAA and most of the states, will fail to achieve Congress' primary goal of controlling crime in the streets of urban high crime areas. Instead of focusing dollars on the critical problems of crime in the streets, local planning funds are being dissipated broadly without regard to need and are being used to finance third levels of bureaucracy as a matter of state administrative convenience. Though the original intent of Congress in accepting the approach of block grants to the states was to prevent federal bureaucratic control of local law enforcement activities and to encourage local planing and innovation, state administrative practices would appear to thwart this objective.

The NLC study also noted that the formula for the distribution of planning funds provided that each State, the District of Columbia, and for territories were to receive $100,000 for planning with additional planning funds to be distributed on the basis of population. As a result, planning funds for American Samoa amounted to $3.45 per capita, as compared to only $0.07 each for citizens of California and New York. While allowing that such allocations for planning can perhaps be justified on the theory that there is a certain level of support below which a successful planning operation cannot be maintained, the NLC survey went on to note the disparity between funds made available for planning and action grants:

Although Alaska and Vermont, for example, will receive $118,000 and $128,000 respectively for planning, they will receive only $33,278 and $51,272 respectively for action programs. Such limited funding for post-planning action may retard implementation of an active state program. This may be a particular problem for urban areas in smaller states; these areas have higher crime rates than the state as a whole, but their problems may not receive state level priority either because of limited action resources or the fact that crime is not a pressing statewide issue.

Of the 31 States surveyed by NLC, 28 were developing regional systems to distribute all, or a substantial portion of the planning and action grant funds which the law requires be funneled to localities. It notes that 24 of the 31 States had officially designated a total of 211 regions, each of which will require staffing and separate policy review structures.

Much more importantly, the regional system for allocation of funds is resulting in a fund distribution which favors rural areas over urban, this despite the LEAA guideline which states:

Priorities in funding local planning should be given to the State's major urban and metropolitan areas, to other areas of high crime incidence and potential, and to efforts involving combinations of local units.—LEAA Guide for State Planning Agency Grants, November 1968.

The NLC study then goes on to zero in on what might well be the most serious—and most disturbing—defect in title I, and that is its seeming inability to insure that planning and action grant funds will be concentrated in those areas with the highest incidence of crime:

Favoritism of rural areas is most pronounced in those states which repeat the national dollar distribution pattern by allocating a minimum amount to each region. Thus in California a rural region of 19,000 population is allocated $11,000 or 58 cents per capita, for planning while the region containing Los Angeles and a population of 9,981,000 is allocated $235,000, or 2.3 cents per capita. In Georgia a rural region of 75,400 population is allocated $10,500 or 14 cents per capita while the metropolitan Atlanta region with 1,307,700 population is allocated $33,750 or 2.5 cents per capita. Furthermore, although the FBI Uniform Crime Reports for 1967 indicate that 60 per cent of Georgia's index crimes were committed in the metropolitan Atlanta area, which contains 30 per cent of the state's population, only about 15 per cent of local planning funds were allocated to this region. A preliminary LEAA survey of all applications indicated that besides California and Georgia, eight other states planned to distribute funds to regions with base grant and population as the determining factor, while 21 states planned to distribute funds strictly according to population. These population formulas take no account of relative need in distributing funds. Only eight states indicated any attempt to recognize incidence of crime as a factor in planning fund distribution by using crime index in combination with population to determine allocations.

It would appear that those elements of law enforcement which best lend themselves to a regional planning approach are in the areas of police training, communications, laboratory systems, and so forth, which are supportive of enforcement activities rather than directly involved in the effort to control crime in the cities. Unfortunately the research of the NLC indicates that regional plans tend to emphasize such supportive programs to the detriment of action-oriented planning presented by the cities.

The NLC also criticized the proportionally small representation of cities on State planning agencies and the failure of the LEAA to require, in accordance with its own guidelines and the clear intent of the act, adequate minority representation.

Criticism of the LEAA grant program were also leveled by the Urban Coalition and Urban America, Inc. in their June 1968 report. After examining the planning process in 12 major urban States they reached the following conclusions:

1. Planning under the Safe Streets Act has for the most part been the work of small numbers of professionals. Only limited representation, at best, has been given residents of poor and minority neighborhoods, where the problem of crime is most intense. Other private citizens—from industry or non-profit organizations concerned with the underlying causes of crime—have not usually been involved. Agencies dealing with problems related to crime, such as health, poverty, or employment, in many cases have played minor roles or have not participated at all.

2. Many state planning agencies are planning separately for each segment of the criminal justice system. Few are making a conscious effort to mold plans for the various elements into a coherent whole.

3. Competence in law-enforcement planning is spread thinly among the states—especially competence in the kind of planning that relates crime to other social problems, and treats the criminal justice systems as an integrated whole. So far, the Justice Department has been able to offer little guidance, either in the planning process or the problem area which the plans are intended to confront. In this void, many states are turning to outside consultants, some of whom are relatively new to the field.

In conclusion, the Urban Coalition and Urban America, Inc., report urged the LEAA to require "the States in their plans to go into considerable detail in describing proposed action projects." It said:

This is one of the few ways of determining whether the deficiencies in planning which this report has noted are being overcome.

Additional doubts about the implementation of title I have been expressed by the National Association of Counties. Based on a questionnaire sent to the chief elected official of every county with a population of 50,000 or more, the NACO study criticizes the LEAA program for not involving more policymaking officials at the State level and suggests that membership of State bodies be expanded to include such officials.

Interestingly enough, criticism of the program has also been issued from the National Governors Conference. Although one of the foremost advocates of the block grant approach to Federal assistance, the NGC has been quick to criticize what it considers defects in the program. In its December 17, 1968, letter to NGC, it noted:

Generally, states with heavy urban populations have fewer representatives of city governments than do states with more rural populations.

The letter went on to state:

It is essential for the success of the intergovernmental aspects of this new program, that local elected officials play a significant role in setting the policies of the state law enforcement planning agency. The views of the elected official, the one concerned with the total role of government, with the budgetary requirements, and with long-range legislative goals are an important ingredient in any statewide law enforcement plan.

This very incisive criticism of the planning process is instructive in view of the great stake that the NGC has in the success of title I. If it fails, the whole concept of block grants to the States as a preferable method of Federal aid to the States will have been dealt a very serious blow.

Undoubtedly, the most complete and contemporary study of title I has been done by Dr. B. Douglas Harman, assistant professor, Urban Affairs Program, School of Government and Public Administration, the American University. Published in the September 1969 issue of Urban Data Service, Professor Harman's article is titled "The Safe Streets Act: The Cities Evaluation." His article states the basic dilemma posed by title I, which is that while city officials must fight crime, the grant-in-aid power lies exclusively with the State governments.

Based on two questionnaires distributed by the International City Management Association during June 1969, Harman focuses directly on the effectiveness of the block grant approach found in the

act. One questionnaire was sent to the directors of all law enforcement planning agencies and the other to the chief administrative officials of those 859 cities with a population of 25,000 or more. All 50 State agencies replied and 637 of the cities—72 percent—returned their questionnaires. In addition to analyzing these data, Professor Harman studied the administrative elements of the 50 State law enforcement plans.

What were his conclusions?

Although allowing that it is still too early to reach hard and fast conclusions regarding the implementation of the grant program, Dr. Harman did state:

The administrative characteristics of this block grant program deserve continued analysis. Although it has been heralded as a reform measure designed to correct the problems found in categorical grant programs, the political and administrative complexities of the block grant as seen in the LEAA program were not fully anticipated by block grant proponents. The administrative goals of this form of grant-in-aid included comprehensive planning, uncomplicated intergovernmental relationships, elimination of federal controls, and state allocation of funds. While some of these goals have been partially achieved, the block grant has caused considerable intergovernmental competition and has generated significant political cross-pressures from important groups.

Harman goes on to comment that "despite the transfers of powers from the National Government to the States, the block grant has not brought about 'uncomplicated intergovernmental relations' or eliminated 'Federal controls.' The network of intergovernmental relations in the LEAA program is complex because all of the governmental units involved in it want to maximize their powers."

In support of his findings, Dr. Harman draws upon the wealth of statistical information provided by his questionnaires. Harman notes that the traditional conflict between State and local governments is borne out by statistics which show that 60 percent of the officials from cities with populations of 100,000 or more hold a negative opinion of State government's activities in urban problems. Specifically, such officials feel that State governments are seldom, or only occasionally, sympathetic or helpful in coping with urban problems. It is not surprising, then, that the block grant system of title I has apparently done nothing to lessen this feeling on the part of larger cities. The comment of the former mayor of Minneapolis, Arthur Naftalin, is typical of sentiments expressed by most big city mayors. Naftalin claimed that State control of the program would "inevitably dilute" authority which should be given to the cities. He also commented that "States are simply not equipped to respond to the needs of the cities." The mayor of a large eastern city asserted that the program had meant "nothing but a dismal trickling down of funds for big cities."

Reinforcing the criticism of the Urban Coalition and Urban America, Inc., are figures in the Harman study which indicate that although citizens make up 22 percent of the total State planning agency membership, "few of these individuals have central city backgrounds or come from minority groups." Moreover, Harman states that the assertion that professional law enforcement officials dominate the plannng process has "some validity." In support of this claim, he notes that on five State planning boards the percentage of public safety representation is between 47 and 34 percent, and that in most States it is similarly large. Some ranking LEAA officials, Harman notes, take the position that "professional competence" is the principal goal and that every citizen participation in law enforcement planning is largely unnecessary.

Harman concludes his balanced study by remarking:

If all state governments were progressive and had innovative leadership, there might not be so much concern. The viability of the block grant approach will be seriously tested in this program, and strong sensitive state leadership, as well as competent technical support, will be required in order for states to assume their full responsibilities.

This statement, Mr. President, very succinctly summarizes the doubts I have about this program's future success and the doubts which have been expressed by the organizations I have mentioned. Simply stated, it appears that title I of the Safe Streets Act, as it is presently structured, has not had, and will not have, the effect of reducing the high incidence of crime currently plaguing this country.

Interestingly, similar doubts about title I's future have been expressed by officials in the Justice Department itself. In an address before the Federal Bar Association on March 10, 1969, Attorney General Mitchell urged the States to "marshal their resources to concentrate on their urban centers." He continued:

Today, "70 percent of our nation's population lives in metropolitan areas. This high concentration of money and people has led to a concentration of social and economic problems.

The Attorney General then said:

There are, according to the Bureau of the Census, 228 standard metropolitan areas. Almost all of them are starved for money and other aids, some of which could be supplied by the state governments.

All too often, needed cooperation and help has stumbled on political rivalries and bureaucratic parochialism which divide the urban centers and the state governments. While I understand the basis for much city-state government rivalry, political parochialism must be put aside in the name of our citizens who live in our cities.

In a speech delivered on October 20, 1969, to the Western Attorney Generals Conference, the director of the Law Enforcement Programs in the LEAA, Mr. Daniel L. Skoler, admitted that although the new program under title I "promises to absorb billions in tax money in the coming decade," it has yet to "produce anything in either improved law enforcement or crime control beyond paper plans and fund transfers."

While praising the accomplishments of the States during the program's first year of existence, such as the creation of 50-State planning agencies and the submission of 50 "comprehensive" plans under which Federal funding will be granted, Skoler also admitted the program has a number of problems. These problems as enumerated by Mr. Skoler are as follows:

1. Staff turnover and quality presents a constant threat to the quality of the Crime Control Act program as administered through the States.

2. Although there are 50 State plans, these are rudimentary, (there are) exhibit gaps in coverage, (they) are often vague and imprecise about implementation, and have yet to incorporate serious, long-term or multi-year components.

3. The States have shown a weak initial commitment for the fields of court, prosecution and corrections.

4. The States remain to demonstrate a clear commitment to the problems of the large cities which account for the bulk of crime incidence.

5. In many States, it is not clear that local government needs and priorities will be fully reflected in the planning process or fully represented in the State planning agency supervisory boards.

6. (There is an) uncertain commitment of States to matching requirement of Act. In this regard, Skoler questioned the ability—he might also have questioned their willingness—to provide matching funds required under the Act.

7. (There is an) uncertain responsiveness of States to citizen and community needs and values.

8. The danger (exists) of inadequate quality in the planning, financing and implementation of improvement goals.

A quick reading of this list, Mr. President, discloses that these are not minor defects which Mr. Skoler has disclosed. Rather, they are deficiencies which go to the very heart of title I. Weakness in staff, weakness in the State planning, weakness in priorities, and most importantly weaknesses in the degree of commitment imperil the principal objective of title I: a dramatic decrease in the rate of crime in this country.

Deputy Attorney General Kleindienst has also expressed his apprehension over the future of the program. On February 12, 1969, he urged the States to include minority representatives in the planning process. He said at that time that the Safe Streets Act must be carefully administered to allay fears that its intent is repressive, rather than protective, Mr. Kleindienst said:

Law enforcement is impossible without a high level of community cooperation. If we forfeit the cooperation of citizens in the high crime areas, we will have lost more ground than we gained. On the other hand, if we utilize the Act to foster that cooperation, we multiply its value . . . If your state Law Enforcement Planning Committee does not now include black people—and in some states, Spanish-speaking citizens—qualified persons from these groups should be sought out and induced to participate wherever possible . . . It is important, also, that spokesmen so selected have the confidence of the rank and file of the population groups for which they speak.

Despite Mr. Kleindienst's pleadings, however, the studies by the Urban Coalition and Dr. Harman indicate representatives of the poor or minority groups and officials of agencies in such fields as welfare, health and manpower are conspicuous by their absence on State planning agencies.

On April 5, 1969, a Justice Department memorandum to State planning agency officials stated that "regional combina-

tions must be more than State-imposed geographic units." The LEAA acknowledged that "SPA—State planning agency—programs for local planning awards have assumed a greater regional emphasis than was expected. There has been considerably less direct pass through to major local units or major metropolitan areas than had been anticipated." In effect, this memorandum made official the doubts Attorney General Mitchell and Deputy Attorney General Kliendienst had expressed about the program.

PROPOSED AMENDMENTS

This necessarily lengthy narrative of title I's history and its implementation by LEAA and the States since the passage of the Safe Streets Act has been offered by way of introduction to proposals which I believe will cure the chief deficiencies in the legislation as it is now written. The board-based criticism which has been leveled against title I by responsible critics in and out of the Justice Department are, I believe, worthy of our most serious consideration. If nothing else, it should be clear that all is not well with the administration of this program. Contrary to the intent of the Congress funds are not being channeled to the localities which have the highest incidence of crime. Rather, funds are generally being diluted by dispersion across the States to regional planning boards which have shown very limited sensitivity to the problems of local governments. Although it is admitted by virtually everyone interested in this problem that crime is essentially, and most seriously, a disease of the cities, there is no indication that LEAA funds are being concentrated in urban areas. I must emphasize that although rural crime is on the increase, and must not be ignored, it still represents only one-twelfth of the overall incidence of crime in this country. In this time of severe strain on the Federal budget, it is essential that every dollar spent for crime prevention be spent wisely. Currently, this is not being done.

I propose, therefore, that section 306 of title I be amended to read that 50 percent of the funds appropriated by the Congress, rather than the 85 percent currently provided, will be allocated as block grants to the States. This amendment has attached to it the proviso that a State's block grant allocation will be increased by 20 percent from funds allocated at the discretion of LEAA, where the LEAA finds that the comprehensive State plan required under the act adequately deals with the special problems and particular needs of the major urban areas and other areas of high crime incidence within the State. Presently, such a finding is not required of the LEAA.

My bill further provides that a State's block grant shall be increased by an additional 20 percent from funds allocated at the discretion of the LEAA where the State contributes at least 50 percent of the non-Federal share of costs for programs of local governments funded in accordance with the comprehensive State plan. It is the purpose of this proviso to better insure that the States will bear their fair share of the non-Federal costs of this program. Both the NLC and Harman studies have indicated an unwillingness on the part of the States to accept readily their responsibilities in this area, with the result that the cities have been forced to finance a larger share of the non-Federal cost than warranted by the benefits which they have received. I strongly believe that if the block grant approach to Federal assistance is to work, there must be a more equitable sharing of costs. I believe adoption of this proviso would go far towards achieving such equity.

This bill would also amend section 301 (b) by inserting a new paragraph authorizing the LEAA to make grants to States for the purpose of crime prevention. It is suggested in this new paragraph that increased funds should be allocated for improvement of lighting in high crime areas and the development of laws and ordinances and building design techniques which would lower the opportunities for crime.

The final amendment contained in this bill would set a 3-year authorization for this all-important program. If the defects in title I, which I have spoken about at some length are to be eliminated I think it is essential that the States be assured of the Federal Government's long-term commitment. In my opinion, this assurance is not provided by a 1- or even a 2-year authorization. Rather, at least a 3-year authorization is required if the program is to be assured a sense of continuity.

As well, this amendment makes substantial quantum increases in the authorization rate. Currently, a $300 million authorization is proposed for fiscal year 1970. This amendment would increase that authorization to $800 million in fiscal year 1971; $1 billion in fiscal 1972 and $1.2 billion in fiscal 1973; an authorization of $3 billion for the period from June 30, 1970, to June 30, 1973.

I firmly believe that if the war against crime is to be fought successfully, Congress cannot afford to authorize less. In large measure the size of our commitment to defeat the forces of crime is measured by the amount of funds which we set aside for that objective. To date the funds allocated for the battle have been patently inadequate to the task at hand.

In summary, Mr. President, let me emphasize that in no way should these amendments which I offer here be construed as an attempt to do away with, or dilute the effectiveness of, the block grant approach to grant assistance. I think that it is much too early to be doctrinaire in one's judgments respecting the block grant approach. In fact, as I have already pointed out, my approach to the allocation of grants may very well result in some States receiving larger block grant amounts than they would receive under the law as it is presently written. What these amendments will do, however, is reemphasize the importance of directing Federal funds to those areas which experience the highest incidence of crime. This, I believe, was the intent of Congress when it formulated this legislation. And this, I believe, should remain its intent.

Mr. President, I ask unanimous consent that the text of this bill be reprinted immediately following my remarks.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3171) to amend the Omnibus Crime Control and Safe Streets Act of 1968, introduced by Mr. HARTKE (for himself and other Senators), was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 3171

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (——) Section 301(b) is amended:

(1) By redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), and

(2) By inserting a new paragraph (5) to read: "Crime prevention, including improved lighting of high crime areas and development of laws and ordinances and building design techniques to lower opportunities for crime."

(b) Section 301(c) is amended to read as follows: "The portion of any Federal grant used for the purpose of paragraph (6) or (7) of subsection (b) of this section may be up to 75 per centum of the cost of the program or project specified in the application for such grant. The portion of any grant used for the purpose of paragraph (4) of subsection (b) of this section may be up to 50 per centum of the cost of the program or project specified in the application for such grant. The portion of any grant to be used for any other purpose set forth in this section may be up to 60 per centum of the cost of the program or project specified in the application for such grant; *Provided* that no funds granted under this section shall be used for land acquisition."

SEC. 2. Section 306 is amended to read as follows: "50 per centum of the funds appropriated to make grants under this part for a fiscal year shall be allocated by the Administration among the States according to their respective populations for grants to the State planning agencies of such States. The remaining 50 per centum of such funds, plus such additional amounts as may be made available by virtue of the application of the provisions of section 509 to the grant to any State, shall, in the discretion of the Administration, be allocated among the States for grants to State planning agencies or used by the Administration for grants for the purposes of this title to State agencies, units of general local government, public agencies, or combinations of the foregoing, according to the criteria and on such terms and conditions as the Administration shall determine consistent with this title. Grants made under the preceding sentence shall not be subject to the limitations set forth in subsections (c) and (d) of section 301: *Provided,* That a State's allocation shall be increased by 20 per centum from funds allocated at the discretion of the Administration where the Administration finds that the comprehensive State plan required under section 303 adequately deals with the special problems and particular needs of the major urban areas of the State and other areas of high crime incidence within the State: *Provided further,* That a State's allocation shall be increased by an additional 20 per centum from funds allocated at the discretion of the Administration where the State contributes at least 50 per centum of the non-Federal share of costs for programs of units of general local government funded in accordance with the comprehensive State plan required under section 303."

SEC. 3. (a) Section 520 is amended by inserting immediately after "June 30, 1970,"

the following: "$800,000,000 for the fiscal year ending June 30, 1971, $1,000,000,000 for the fiscal year ending June 30, 1972, and $1,200,000,000 for the fiscal year ending June 30, 1973."

S. 3173—INTRODUCTION OF A BILL TO EXTEND THE TIME WITHIN WHICH CLAIMS MAY BE FILED FOR CREDIT WITH RESPECT TO GASOLINE USED ON FARMS

Mr. McGOVERN. Mr. President, I introduce today a bill to extend the time within which claims may be filed for credit with respect to gasoline used on farms.

Present law provides that farmers may receive a tax credit for taxes which they have paid on gasoline which is used in farm machinery. This is, of course, quite equitable since the gasoline tax is essentially a road tax and farm machinery operates primarily off of Federal highways.

As the Internal Revenue Code now reads, the farmer must claim this credit at the time of filing his income tax that year. The bill I am proposing will permit the farmer to file for this credit any time within the period normally allowed for filing a claim for a credit or refund of an overpayment of income tax, presently 3 years.

This bill brings the gasoline tax credit provision into line with income tax refund provisions and permits farmers to file for their credit later if they are unable to meet the existing deadline.

Mr. President, I believe that this adjustment of the Internal Revenue Code will grant the same privileges to farmers which other taxpayers enjoy. It is simply giving them an adequate chance to claim what is rightfully theirs. Surely there can be no objection to it.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 3173) to extend the time within which claims may be filed for credit with respect to gasoline used on farms, introduced by Mr. McGOVERN, was received, read twice by its title, and referred to the Committee on Finance.

S. 3174—INTRODUCTION OF A BILL RELATING TO DISPOSITION OF FUNDS TO PAY JUDGMENTS IN FAVOR OF CERTAIN INDIANS

Mr. McGOVERN. Mr. President, I introduce for appropriate reference, a bill to provide for the disposition of funds appropriated to pay judgments in favor of the Mississippi Sioux Indians in Indian Claims Commission dockets Nos. 142, 359–363, and for other purposes.

The Mississippi Sioux Indians have received a very substantial award from the Indian Claims Commission. This bill would provide the necessary authority for the distribution and use of the funds already appropriated to satisfy the judgment. I wish to make it clear that I reserve judgment on the provisions of the bill and that I am introducing it at the request of the Sisseton-Wahpeton Sioux Tribe in South Dakota in order that hearings may be held and all the facts brought to light concerning the manner in which the funds should be divided and utilized.

Mr. President, I ask that a letter from Mr. Chris R. Johnson, Secretary of the Sisseton-Wahpeton Sioux Tribe, requesting introduction of this legislation be printed in the RECORD, together with the language of the proposed bill.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill and letter will be printed in the RECORD.

The bill (S. 3174) to provide for the disposition of funds appropriated to pay judgments in favor of the Mississippi Sioux Indians in Indian Claims Commisson dockets numbered 142, 359–363, and for other purposes; introduced by Mr. McGOVERN, by request, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

S. 3174

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the funds appropriated by the Act of June 19, 1968 (82 Stat. 239), to pay compromise judgments to the Sisseton and Wahpeton Tribes of Sioux Indians, and the Medawakanton and Wahpakoota Tribes of Sioux Indians in Indian Claims Commission dockets numbered 142, 359, 360, 361, 362, and 363, together with interest thereon, after payment of attorney fees and litigation expenses and the costs of carrying out the provisions of this Act, shall be distributed as provided in this Act.

SEC. 2. The direct descendants of Medawakanton and Wahpakoota Tribes now residing in organized groups at Flandreau, South Dakota, known as Flandreau Santee Sioux Tribe, Niobrara, Nebraska, known as the Santee Sioux Tribe of the Sioux Nation of the State of Nebraska, Morton, Minnesota, known as Lower Sioux Community, Welch, Minnesota, known as Prairie Island Indian Community. The above named Tribes and Communities shall prepare rolls of their members with available records and rolls at the local agency and area offices. Applications for enrollment must be filed with each group named in this section and such rolls shall be subject to approval of the Secretary of the Interior. The Secretary's determination on all applications for enrollment shall be final.

SEC. 3. The Secretary of the Interior shall prepare (a) a roll of persons of Sisseton and Wahpeton Mississippi Sioux Indian blood born on or prior to and living on the date of this Act whose name or the name of a lineal ancestor appears on the official approved current rolls of the Devils Lake Sioux Tribe of North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, and the Upper Sioux Indian Community of Minnesota, of the Sisseton and Wahpeton Band of Sioux Indians, and (b) a roll of persons of Sisseton and Wahpeton Mississippi Sioux Indian blood born on or prior to and living on the date of this Act whose name or the name of a lineal ancestor appears on the 1909 Annuity Payroll of members of the Assiniboine and Sioux Tribes of Fort Peck, Montana. Applications for enrollment must be filed with the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, in the manner and within the time limits prescribed by the Secretary for that purpose. The Secretary's determination on all applications for enrollment shall be final. No person shall be eligible to be enrolled under this section who is not a citizen of the United States.

SEC. 4. Any person qualifying for enrollment with more than one of the named Indian groups shall elect the group with which he shall be enrolled for the purpose of this Act.

SEC. 5. After deducting the amounts authorized in Section 1 of this Act, from funds derived from the judgment awarded in Indian Claims Commission dockets numbered 360, 631, 362, 363, and one-half of the amount remaining from docket numbered 359, the balance, plus accrued interest, shall be apportioned on the basis of the roll prepared pursuant to Section 2 of this Act. An amount equivalent to the proportionate shares of those persons who are members of the Flandreau Santee Sioux Tribe of South Dakota, the Santee Sioux Tribe of the Sioux Nation of the State of Nebraska, the Lower Sioux Indian Community in Minnesota, and the Prairie Island Indian Community in Minnesota, shall be placed on deposit in the United States Treasury to the credit of the respective tribes and 60 percent of such funds shall be distributed per capita to those tribal members listed on the rolls prepared pursuant to Section 2 of this Act, the remainder may be advanced, deposited, expended, invested, or reinvested for any purposes designated by the respective tribal governing bodies and approved by the Secretary of the Interior; *provided, however,* That none of the funds may be paid per capita to any person other than persons whose names appear on the roll prepared pursuant to Section 2 of this Act. The shares of enrollees who are not members of the tribal groups named in this Section shall be paid to them in accordance with the terms of this Act, provided they are not on rolls of other tribes not directly concerned.

SEC. 6. After deducting the amounts authorized in Section 1 of this Act, from funds derived from the judgment awarded in Indian Claims Commission docket numbered 142 and one-half of the amount remaining from docket numbered 359, the balance, plus accrued interest, shall be apportioned on the basis of the roll prepared to Section 3 of this Act. An amount equivalent to the proportionate shares of those persons who are members of the Devils Lake Sioux Tribe, Fort Totten, North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, and the Upper Sioux Indian Community in Minnesota, shall be placed on deposit in the United States Treasury to the credit of the respective tribes and 70 percent of such funds shall be distributed per capita to those tribal members listed on the rolls prepared pursuant to Section 3 of this Act. The remainder may be advanced, deposited, expended, invested, or reinvested for any purposes designated by the respective tribal governing bodies and approved by the Secretary of the Interior; Provided, however, that none of these funds may be paid per capita to any person other than persons whose names appear on the roll prepared pursuant to Section 3 of this Act. In the case of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, the Fort Peck Sisseton-Wahpeton Sioux Council shall act as the governing body in determining the distribution of funds allotted for programing purposes.

SEC. 7. Sums payable to enrollees or their heirs or legatees who are less than twenty-one years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interest of such persons, upon the recommendation of the governing bodies of the tribes named in Sec. 5 and 6 of this Act.

SEC. 8. Any part of such funds that may be distributed under the provisions of this Act shall not be subject to Federal or State income tax and shall not be subject to any lien, debt, or attorney fees except delinquent debts owed by the tribes to the United States

or owed by individual Indians to the tribes, or the United States.

SEC. 9. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act, including the establishment of deadlines.

The letter, presented by Mr. McGOVERN, is as follows:

SISSETON-WAHPETON SIOUX TRIBE
OF THE LAKE TRAVERSE RESERVATION,
Sisseton, S. Dak., November 7, 1969.

Senator GEORGE MCGOVERN,
U.S. Senate,
Washington, D.C

DEAR HONORABLE GEORGE MCGOVERN: We wish to submit on behalf of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation this proposed disposition Act that would provide for the disposition of funds appropriated to pay judgments in favor of the Mississippi Sioux Indian in Indian Claims Commission dockets numbered 142, 359–363.

This proposed Act is a result of many meetings and discussions held by the individual bands concerned and finally by the different bands in two separate combined meetings.

We would certainly appreciate having this bill introduced and passed as this claim has been pending for approximately twenty years.

Any assistance your good office can provide in this matter will be greatly appreciated.

With every good wish,
Sincerely,

CHRIS R. JOHNSON,
Secretary.

ADDITIONAL COSPONSOR OF A BILL

S. 2847

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Wisconsin (Mr. NELSON) I ask unanimous consent that, at the next printing, the name of the Senator from Texas (Mr. YARBOROUGH) be added as a cosponsor of S. 2847, to amend the Foreign Assistance Act, as amended, to authorize the Secretary of State to participate in the development of a large prototype desalting plant in Israel, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL COSPONSOR OF A RESOLUTION

S. RES. 285

Mr. PROXMIRE. Mr. President, I ask unanimous consent, at the next printing, the name of the Senator from Hawaii (Mr. INOUYE) be added as a cosponsor of Senate Resolution 285, authorizing the Foreign Relations Committee to study international cooperation in space.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE, AND RELATED AGENCIES APPROPRIATION BILL, 1970—AMENDMENTS

AMENDMENTS NOS. 288 AND 289

Mr. MCGOVERN. Mr. President, I am submitting for appropriate reference two amendments to the Labor and Health, Education, and Welfare and related agencies appropriations bill—H.R. 13111. They provide for increased appropriations for elementary and secondary education programs and for higher education.

The amounts requested are minimal. We have been asked to spend many times this amount on less important projects—unneeded aircraft, useless missiles, and dangerously provocative weapons systems. I simply ask that we make a small investment in the future of our children and the future of our Nation.

THE ELEMENTARY AND SECONDARY AMENDMENT

The first amendment—No. 288—has two major features. It asks a total funding increase of $304,761,300 for fiscal 1970 over H.R. 13111 as it presently stands, and also provides for year-ahead funding of a number of programs. The amounts to be appropriated for fiscal 1971 represent a 19-percent increase over the fiscal 1970 amounts which I am proposing for the affected programs. This advanced funding is needed if schools are to have their funds available at the beginning of the school year.

I will not at this time attempt to give an extensive analysis of the amendment, but I will briefly mention the functions of the programs and the increases over H.R. 13111 for fiscal 1970 along with the total amount for 1971.

Title I of the Elementary and Secondary Education Act which provides funds to assist in the education of children from deprived backgrounds: an increase of $103,839,300 and an appropriation of $175,000,000 for 1971.

Title II of the same act which provides supplementary grants to the States for the purchase of textbooks and other instructional materials: an increase of $50 million, and appropriation of $125,000,000 for 1971.

Title III which creates grants that establish and carry on supplementary education centers and services which provide educational experiences that are needed by students, but which are frequently not available in the existing public schools: an increase of $8,124,000, and an appropriation of $233 million in 1971.

Title V–A of the National Defense Education Act which grants funds to schools systems to strengthen their guidance and counseling services: an increase of $5 million, and an appropriation of $26 million in 1971.

Title V of the Elementary and Secondary Education Act which recognizes the need for strong State departments of education and provides grants to improve their operation: an increase of $10,250,000 and an appropriation of $45 million for 1971.

Title VII and section 807 of the same act which provide respectively for programs which attempt to prevent dropouts and which give special instruction to children whose mother tongue is not English: an increase of $5 million and $20 million in 1970 and an appropriation of $25 million and $30 million in 1971.

The Education Professions Development Act which provides special programs such as training institutes, fellowships for teachers, training of special teachers, teacher recruitment, and the Teacher Corps: an increase of $56,963,000 and an appropriation of $195,300,000 in 1971.

There are a number of acts covering education of handicapped children and this amendment increases the total sum available for their education by $21 million and an appropriation of $160 million for 1971.

Four programs contained in this amendment deal with the continuing education of the community as a whole.

Titles I and II of the Library Services and Construction Act which provide respectively for the construction of public libraries and the establishment and maintenance of cooperative library networks: Title I to be advance funded at $40 million and title II increased by $8,815,000.

Title I of the Higher Education Act which establishes grant programs for community service and continuing education programs by colleges and universities, an increase of $5,500,000.

Finally, title II of the Communications Act of 1934 which provides funds for assisting in the purchase of educational broadcast facilities, an increase of $5,500,000.

The PRESIDING OFFICER. The amendment will be received, printed, and appropriately referred.

The amendment (No. 288) was referred to the Committee on Appropriations.

HIGHER EDUCATION AMENDMENT

Mr. MCGOVERN. Mr. President, the second amendment—No. 289—to H.R. 13111 deals primarily with the funding of higher education. It increases appropriations for 10 programs by $386,337,000.

These include four programs for construction of academic facilities: one provides grants for community colleges, increased $25,400,000; another, grants to other institutions of higher learning, increased $172,200,000; a third, grants for the construction of graduate facilities, an appropriation of $25 million where H.R. 13111 contains none; and, finally, loans for all sorts of academic facilities, appropriation increased from zero in H.R. 13111 to $100,000,000 and repayment moneys unfrozen. These programs were created by the Higher Education Facilities Act.

Title VI of the Higher Education Act provides grants for the purchase of undergraduate instructional equipment, an increase from zero to $25 million.

Title IV of the National Defense Education Act which is one of the primary sources for graduate fellowships to potential college teachers, an increase of $18,837,000.

The amendment also provides additional funds to strengthen college libraries by funding otherwise inoperative features that make per student grants to the college and develop regional specialty libraries for an increase of $12,500,000.

Finally, the amendment appropriates funds for three programs which have never before been funded: clinical training for law students, $3 million; assistance to public service education, $3 million; and the International Education Act, $3 million.

The PRESIDING OFFICER. The

amendment will be received, printed, and appropriately referred.

The amendment (No. 289) was referred to the Committee on Appropriations.

JOB OPPORTUNITY

Mr. SCOTT. Mr. President, one of the greatest tasks which face our Nation today is that of assuring that every American can work and can advance to the limits of his or her ability. The Equal Employment Opportunity Commission, which was created by Congress under title VII of the Civil Rights Act of 1964, is charged with the responsibility of eliminating discrimination in employment. William H. Brown III, Chairman of the EEOC, last night opened a 3-day conference on equal job opportunities, which is being attended by almost 50 representatives of the Nation's major trade and civic associations. The Chairman read a letter from President Nixon to the conference enlisting the cooperation of America's businesses in attacking the problem of job discrimination. Chairman Brown's speech before the conference described the problems which we face, and urged the business community to take steps of its own to solve the problem, rather than waiting for the Government to force it to act.

The conference is being sponsored by the Johnson Foundation and the Cambridge Center for Social Studies and is being conducted at "Wingspread," the Johnson Foundation's headquarters near Racine, Wis. In addition to Chairman Brown and the other Commissioners of the Equal Employment Opportunity Commission, the conference will hear representatives of the Office of Federal Contract Compliance of the Department of Labor, the Contract Compliance Office of the Defense Department, the U.S. Civil Rights Commission, and the Council on Indian Opportunity. It will also hear a panel on "Affirmative Action and the Private Sector," consisting of representatives of the Equitable Life Assurance Society, Michigan Consolidated Gas Co., Hoffmann-LaRoche Inc., and the National Advisory Council for Black Business and Economic Development.

I ask unanimous consent that the text of Chairman Brown's speech, President Nixon's letter, and a list of the national trade associations attending the conference be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

REMARKS BY WILLIAM H. BROWN III, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Good evening. I want to thank each and every one of you, who represent America's leading trade associations, for taking time from your busy schedules to participate in this conference on equal employment. I also want to thank the Johnson Foundation which is sponsoring this conference and is making these remarkable facilities of "Wingspread" available to us.

I would like to broadly define what problems we face as a Nation with respect to job discrimination, and to suggest some general approaches which trade associations and our Nation's businesses can take to help alleviate those problems.

As you know, the Equal Employment Opportunity Commission was established by Congress under Title VII of the Civil Rights Act of 1964, to end job discrimination by private industry and labor unions in our Country.

Since 1964, the Commission has heard over 40,000 cases and has found discrimination in 60 percent of those cases. That is a staggering figure which can only lead to one conclusion—that job discrimination is widespread and deeply entrenched in our society. These figures do not represent a few malcontents and troublemakers who file charges on the basis of imagined wrongs.

They represent the frustrations and despair of members of minority groups, and women, who are capable and willing workers but who see their best efforts constantly shortchanged.

Discrimination in employment is perhaps more often an unconscious and unintentional pattern than it is a deliberate scheme. Regardless of the cause, the effect is the same—the exclusion of capable and qualified workers for reasons other than those related to their ability to do the job.

The chains of discrimination in employment are just as real a form of slavery and tyranny as the chains that once bound men as slaves. The chains of discrimination deny a man's humanity, they deny him a chance in the arena of life to earn a decent livelihood and to make something of himself. They turn the American dream into an American nightmare. And just as the chains of slavery had to be broken to set men free, so the shackles of employment discrimination must be loosened today.

The Equal Employment Opportunity Commission was given a mandate by Congress to break down and eliminate job discrimination wherever it is found.

In the past five years, since the Commission started holding hearings and investigating cases, and collecting figures, we have confirmed what many had suspected. Job discrimination knows no boundaries of geographical region, class, or profession. While it is widespread and open in the South, it is well-honed and subtle in other areas. You will find it in the board room as well as in the boiler room. It exists in industry, labor, education, journalism, and medicine. There is no immunity to it, because little attention has been given until now to its debilitating effects. It was the kind of illness which most people thought did not constitute immediate emergency. There were no running sores, and usually it was accompanied by a low-grade fever. Too often, even the people afflicted did not know that they were in poor condition. Even today, too many of them do not know that remedies are available.

Congress distilled the remedies in the 1964 Civil Rights Act, when it created the EEOC, and it left out one of the vital ingredients at the time, enforcement powers. One of the remedies is the compliance process. This involves the receipt and investigation of job discrimination charges filed by blacks, Spanish Americans, Indians, women, Jews—anyone who feels the effects of discrimination in hiring, promotions, on-the-job conditions, pay, and any other area where factors other than ability and performance come into play.

During fiscal year 1968, the Commission took on a total of 10,095 complaints of job discrimination; this figure rose to 11,720 during the past year. When we find that a complaint is valid, we go to the parties involved and try to eliminate the unlawful practice through a process of negotiation which we call conciliation. The goal of the Commission in conciliation is to obtain specific relief for the injured party. In the process we are often able to convince the employer to make a general reform of his employment practices when we find that the individual case in question is merely one instance of a wider problem within the firm. Thus, one successful conciliation will sometimes have an impact beyond the single individual who initiated the case. That is when we are successful.

If conciliation fails, the only recourse for the charging party at the present time is to initiate a private suit against the employer. If the Commission finds that a pattern or practice of discrimination exists, it will refer the case to the Attorney General of the United States for prosecution.

The missing ingredient which is needed to make this remedy more potent is enforcement power for the Commission. Now we must depend upon reason and goodwill to bring about conciliation. In cases where an employer has been deliberately practicing discrimination, goodwill does not exist in large doses.

The current Administration is solidly committed to providing EEOC with enforcement powers, and legislation is now moving through Congress. I believe that this Congress will give EEOC the power it must have to deal effectively with illegal job discrimination. I believe that when the Commission does have the power to compel compliance with the law, we will find a great reservoir of goodwill welling to the surface by employees who previously found little time for concern with problems of discrimination. With effective enforcement powers, our powers of persuasion will pack a great deal more punch.

Frankly, I hope we can keep our enforcement powers in reserve and not have to make extensive use of them. I would rather see cases settled through voluntary compliance. Better yet, I would like to see fewer and fewer cases come before the Commission as a result of positive action by American business and industry to define and eliminate discriminatory practices withins its own house.

Do not leave it up to the Government to solve your problems for you. Wake up to the fact that it is in your own self-interest to eliminate job discrimination. The idea that business and society cannot operate exclusively of one another is not a new concept, but I think it is more often heard in speeches and discussed philosophically in conferences, and too seldom made part of business mode of operation.

Wouldn't you *rather* do it yourself? Or do you want to be dragged by the heels screaming into the arena? Give equal employment opportunity a try on a full-scale basis, and you will probably find that it does not hurt at all. That is what we are trying to put across during this conference.

The automobile industry and the tire industry are good examples where lack of response to public needs resulted in having safety regulations shoved down the industries' throats. Now, after discovering that safety sells, they are starting to offer safety innovations on their own.

Several years ago the television manufacturing industry fought tooth and nail to avoid equipping television sets with all 82 channels. Finally the government had to force them to do it. The industry predicted collapse and bankruptcy, but it did not happen. Today, the price of television sets is cheaper than ever before.

Here in this room sit the representatives of our Nation's top businesses. You are the leaders and the pace setters in your fields. But you have not, so far, set any records in the area of equal employment.

Often the blacks and other minority group members, who do get hired or promoted have to be exceptional in ability or attractiveness to get where they are. This is especially true in professional and managerial positions. Many employers boast of the Negroes in their firms. They usually have good reason to do so, because the Negro probably had to be first in his class to get the job; whereas his white colleague, doing the same job, is usually able to qualify with much less impressive credentials.

Take another example. If you walked through some of your firms and saw the Negro employees, you might really become convinced that black is beautiful. The Negro who applies for a "visible" position usually need not bother unless he or she looks like a fashion model and speaks "standardized English". However, you might note that his white supervisor has skin blemishes and stutters.

You may say that I am exaggerating. But give yourself a test. The next time you fill an opening, consider a minority group member whose test scores or scholastic achievements are no greater than those of a qualified white applicant, or consider hiring an ugly Negro, and see if they can do the job.

As the leaders of American business, why not take the lead in equal employment opportunity. Greater credit will be yours if you do set the pace, than if you wait for the United States Government to stand behind you and push.

If you need advice on how to proceed, come to us at the Commission, rather than waiting for us to come to you, with a case file in hand.

We know that American business is growing increasingly concerned about the threat to our society which continued inaction in this area could produce. We are also aware that many companies want to improve their records in this area, but like a government bureaucracy they are stuck in their ways or do not have the expertise needed to make fundamental changes in employment practices. They need to take a new look at their policies of recruitment, hiring, upgrading, testing and other procedures.

The EEOC is willing and anxious to help. Our Office of Technical Assistance is available to aid any firm which requests help in setting up fair employment practices, effective minority recruiting and training programs, and other programs designed to correct present abuses and prevent future problems.

I would much rather that the firms which you represent talk to us over a blueprint for action than over an investigator's case file. That is the preferred procedure because it involves prevention rather than cure.

Let me outline some of the affirmative action programs which business can adopt, which would be recommended in greater detail by EEOC's Technical Assistance Office.

First, review existing personnel placement of minorities. See how many minority group persons you employ and how that mirrors the racial balance of individual communities. See if in fact your minority persons are underutilized. Have the ladders to higher jobs been blocked by unwritten rule or custom? If so, remove those blocks and move presently employed minority persons up the ladder of advancement.

Second, review your recruitment, selection and testing procedures. Do you recruit only in the white press and in predominantly white campuses? Are you actively recruiting in the minority press and on minority campuses? Do your tests tend to screen people out rather than in? Do your tests require overqualification for the job to be done?

Third, check out your personnel office. This is central to any effective affirmative action program in employment. Do you have ample minority recruiters who can serve as living evidence of your good intentions and sincerity?

Fourth, what about your community relations? Do you really relate in a meaningful way to minorities in your communities? Have you really taken off your coat, rolled up your sleeves and gotten involved in the problem solving of the urban ills threatening our society today?

Fifth, what about your trade association? Have you thought of hiring a fulltime expert to work on affirmative action programs with your member companies for the '70's? Clearly the affirmative action programs for the '60's have been inadequate. New initiatives, new ideas, new creativity must break forth. Do you exchange information of successful programs at national association meetings and through your publications?

Sixth, have you given the priority to equal employment opportunity that it deserves when viewed in the terms of the future destiny of our society and in terms of the human lives wasted and lost because of discrimination.

Seventh, have you made the deep decision as to how high are you prepared to allow minorities to rise? To the fullest of their ability?

Eighth, are you aware of the need and are you practicing some kind of compensatory system of recruitment and placement to begin to even the ledger of racial imbalance in your employment patterns. It is a ledger way out of whack by any criteria in most American industry today.

It will require determination and positive action to set things straight. We must establish the bonds of trust between the haves and the have-nots in our society.

After decades of segregation, after generations of unequal opportunity, after a lifetime of inadequate education, the blacks and the Spanish-Americans and other minority groups will not believe that you are serious just because you print at the bottom of your ads that you are an equal opportunity employer. It will require more than words on your part.

I propose to you tonight an opportunity to form a cooperative partnership between business and government to deal with this major problem of discrimination in employment. I hope you will seize it. For if this approach fails, it means the Commission will be forced into an adversary position with American business. That would not be healthy, either for the minority community or for the business community.

The problems are too immense for us not to work together and use every means at our disposal to solve them. They cannot be solved by business alone. Nor can they be solved by government alone. They may not be solvable at all. But if they are, it will require the best efforts of us all.

At EEOC we plan to expand the technical assistance program because we expect, and hope, that cooperation with people like yourselves will replace confrontation. We would like eventually to be able to put all of our resources into technical assistance, and reserve the conciliation and enforcement functions for a few rare occasions. That will depend partly on your response.

Let us tonight welcome the challenge of the '70's, and attempt to provide the kind of leadership that is required of us. Let us resolve to open up the system so that everyone can participate freely and fairly to the fullest of his and her potential. Let us raise together a new standard of justice which will make equality of opportunity a reality rather than a platitude.

Our Nation will achieve its goal of equal Employment opportunity for all its citizens. The only question is how. We can do it through the long and tortuous route of investigation, conciliation, and court proceedings based on the law which says that discrimination in employment is illegal. Or, with your help, we can do it in a spirit of cooperation and good will, based on the realization that discrimination in employment is unjust, indefensible, and unproductive.

I would like to close with the words of Thomas Wolff:

"To every man, regardless of birth, his shining golden opportunity, to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make—this, seeker, is the promise of America."

THE WHITE HOUSE,
Washington, November 19, 1969.

Hon. WILLIAM H. BROWN III,
Chairman, Equal Employment Opportunity Commission, Conference on Equal Employment Opportunity, Racine, Wis.

DEAR BILL: It is a pleasure to greet the representatives of America's leading trade associations and civic organizations who attend this Conference on Equal Employment Opportunity.

As the first large-scale gathering of business and government representatives for the purpose of exploring the problem of job discrimination in America, this meeting does indeed promote cooperation—not confrontation. You have recognized that all of us must work together to assure that all Americans have equal job opportunities based on their abilities, and that these abilities are fully and profitably used.

The President's Council of Economic Advisers has estimated that discrimination in employment costs the economy at least $30 billion annually. The further costs in human dignity and damage to the social fabric of our national life cannot be calculated. It is the goal of this Administration to insure equal employment opportunity to every citizen. To this end, I have urged the Congress to provide enforcement power to the Equal Employment Opportunity Commission. I hope that it will not be necessary to exercise that power often.

And this is where the businesses and industries you represent can play a vital part. By taking the lead in promoting equal employment opportunity and making it a matter of course and not an issue for courts, you can deal affirmatively and constructively with the problems we face. And you can brighten the futures of countless fellow Americans—while teaching others that discrimination is not only a violation of the law, but a violation of the spirit and tenets on which this nation was founded.

May your deliberations be rewarding for your participants, and for the nation you serve with such distinction.

Sincerely,

RICHARD NIXON.

CONFERENCE PARTICIPANTS

Aerospace Industries Association of America, Inc.
American Bakers Association
American Gas Association
American Meat Institute
American Road Builders' Association
Association of American Railroads
Edison Electric Institute
Institute of Temporary Services, Inc.
International Sanitary Supply Association
National Association of Broadcasters
National Association of Manufacturers
The National Federation of Business and Professional Women's Clubs, Inc.
National Machine Tool Builders' Association.
National Roofing Contractors Association
National School Boards Association
Pharmaceutical Manufacturers Association Foundation, Inc.
American Nursing Home Association
U.S. Jaycees.
American Newspaper Publishers Association
National Tool, Die and Precision Machining Association
Manufacturing Chemists Association
National Asphalt Pavement Association
American Life Convention
Associated Equipment Distributers
National Canners Association
U.S. Chamber of Commerce
American Paper Institute
American Iron and Steel Institute
American Petroleum Institute
American Medical Association

American Insurance Association
American Metal Stamping Association
American Foundrymen's Society
National Tire Dealers and Retreaders Association, Inc.
American Trucking Association
Urban Coalition of Minneapolis
American Association of Advertising Agencies, Inc.

DEATH OF JOHN E. DURISOE, SENATE DOORKEEPER

Mr. BYRD of Virginia. Mr. President, on November 15, John E. Durisoe, of Falls Church, Va., died at the Fairfax Hospital. Mr. Durisoe had served the Senate with courtesy, efficiency, and good humor as a Doorkeeper for nearly 10 years at the time of his death.

I take this occasion to express my sympathy for Mr. Durisoe's family and to say that he will be missed in the Senate.

I ask unanimous consent that the notice of death be printed in the RECORD.

There being no objection, the notice was ordered to be printed in the RECORD, as follows:

JOHN E. DURISOE

Suddenly on Saturday, November 15, 1969 at the Fairfax Hospital, Fairfax, Va. John E. Durisoe of 2863 Rosemary Lane, Falls Church, Va., beloved husband of Mrs. Mary K. Durisoe, and father of Susan Durisoe. He is also survived by his mother, Mrs. Doris L. Durisoe of Falls Church, Va., a sister, Mrs. Hugh Darling of Los Angeles, Calif., and two aunts, Mary F., and Lela R. Durisoe of Washington, D.C. Friends may call at Hysongs Funeral Home, 1300 N St. NW., on Monday, November 17 between 12 noon and 9 p.m. Service and Interment will be held in Grayson, Ky.

PORNOGRAPHY CONTROL LAWS

Mr. GOLDWATER. Mr. President, it is very encouraging to me to see that legislation against pornography has been put high on the list of measures which the distinguished majority leader and minority leader have announced must be considered by the Senate prior to adjournment in December.

The movement to obtain serious Senate consideration of bills pending in this field is one in which I have joined since early in the spring. I regret to say that it was an embarrassing discovery for me to find out that the only thing a Senator could do if he wished to testify about pornography was to cross the Hill and speak before members of a House committee.

Two different committees of the House have been holding open hearings on the obscenity problem all year long, but there has not been 1 day of hearings on the Senate side. I think that the whole Nation is hoping the decision by the leadership will put a spur under the Senate so that we can get rolling on this.

There is no question that most Americans are deeply irritated by the outpouring of filth which bombards their homes.

Who among us has not received numerous letters from residents of his State pleading that we take new initiatives to control the dissemination of indecent materials? My mail has reached as high as six letters in a single morning from citizens who criticize the ineffectiveness of existing pornography laws.

No one has compiled a total of just how much mail is sent to Members of Congress by persons who demand the enactment of new laws against smut, but it must be gigantic.

Another indication of the enormity of the problem is reflected in the fact that well over one-half million persons have filed complaints with the Post Office Department in the last 3 fiscal years specifically objecting to obscene mailings.

These protests have recently jumped to a projected rate of nearly a quarter million complaints annually. This is the highest number ever received by the postal service since it began keeping data bearing on such complaints. The fact that hundreds of thousands of citizens are sufficiently aroused to register their outrage against smut mail in this way is clearly deserving of our special attention.

The actual number of Americans who want protection against the unsought and unwelcome intrusions caused by the smut peddlers can only be estimated. But, the results of a recent Gallup poll give us a pretty good clue. This poll revealed that 85 out of every 100 adults interviewed said that they favor stricter laws dealing with obscenity in the mails. Translated into population statistics, this means that 100 million persons are dissatisfied with the existing postal obscenity laws.

Why is this so? Why is it that the present laws have failed to prove equal to the task? What solutions exist by which we can put a halt to the menace which is threatening the sanctity of American homes?

Mr. President, these are the kinds of questions which I have been examining for the past several months. I have reached certain conclusions about the problem and I would like to share them with you now.

First. The major source of outrage among our citizens is the unsolicited, sexually oriented literature that is being delivered to the doorstep and mailbox of millions of American households.

It is not so much the new wave of movies and avant guard plays that are presented in the downtown theater that people object to. It is not so much the pulp magazines and paperback books that are sold at the corner newsstand that create the public's alarm.

These things are offensive to many people. But, the primary target of anger and concern is not anything that is happening in public places. The threat which provokes citizens from coast to coast is one that strikes at the very heart of each individual's last fortress of personal liberty—his ability to bar the entry into his own home of intrusions that shock or offend his personal sensibilities.

It is here where the American people want and demand Federal action. It is here where the problem is so massive and so dangerous that individual citizens must seek assistance at the national level.

The average citizen—who might be referred to as the "forgotten American"—expects to be able to choose what it is he sees and reads in the privacy of his home. Further, he expects to be able to have some reasonable control over what kind of material his children will be exposed to in the confines of his own home.

Mr. President, the second conclusion which I reached is that the American public is entirely warranted in calling upon the Congress for help in controlling the distribution of indecent materials. For the problem is certainly one of national scale. It is also one which involves a sizable traffic in the channels of interstate commerce.

Smut, I regret to say, is a major industry. The distribution of pornographic books, magazines, films, and novelties has grown to a billion dollar business. By comparison the total sales of the U.S. Government Printing Office are only $17 million annually.

According to Assistant Attorney General Wilson, who is in charge of the Criminal Division of the Department of Justice, this business is dominated by approximately 15 to 20 large dealers.

The chief postal inspector has put it in different terms. He estimates that 95 percent of the complaints about obscenity in the mails results from the indiscriminate mass mailings of 15 distributors.

These operators usually send out computerized first-class mailings to pander their filth. They are well-heeled firms making as much as $10 million in 1 year.

The market for obscenity has grown so lucrative that it now yields an enticing plum to be grasped by organized crime. A newly formed joint strike force that was set up last July among Federal, State, and local law enforcement officials in New York City has uncovered convincing evidence showing the infiltration of organized crime into the field of hard-core obscenity.

In fact, Daniel Holman, who is in charge of the strike force, tells me that the Justice Department has won an indictment in New York against two members of the mob family accused of shipping locker boxes full of hard-core pornography to scattered points all over the country.

Mr. President, it is clear that a problem of major proportions exists. And, it is equally clear that the American public needs our help. But in order to know what changes are called for, we must first take a look at what is wrong with the present laws.

Everyone knows that there is a whole battery of Federal antiobscenity laws already on the books. On occasion these have proven useful in putting a finger in the dike against obscenity.

Even the Roth case, which is so often criticized, actually involved the successful application of the basic Federal statute banning the mailing of obscene matter (354 U.S. 476). Likewise, the first Ginsburg case in 1966 saw the Court upholding a conviction under the same law (383 U.S. 631).

In Roth the illicit merchandise consisted of obscene circulars and advertisements and an obscene book. In Ginsberg, the objectionable matter included three publications and related advertising.

The question might then fairly be asked, "Why, if there are Federal laws directed against obscenity, which have

been used as weapons against some sexually offensive advertisements and publications, is there a need for additional laws?"

The paradox will appear even more confusing when I mention that there has been a vigorous prosecution of obscenity cases by the Justice Department in the last few months which have resulted in Federal indictments being returned against 17 of the approximately 20 major pornography dealers. In addition, the Chief Postal Inspector has prepared evidence relating to the mailing activities of at least 14 smaller distributors that should mature into prosecutions shortly.

And, to take developments a step further, I am delighted to report that the Nixon administration has made a visible demonstration of its intent to give top priority status to the prosecution of obscenity cases by concentrating all the responsibilities for handling this job into one section at the Justice Department. This step is one which I and several other Senators urged upon the White House early this year and I am greatly pleased that the President and the Attorney General have put the idea into being.

While there has been real progress in the record of indictments in the last few months, however, it is also the unfortunate truth that the same people who are under indictment continue to grind out their unwholesome product while the number of citizen complaints soars up and up.

Part of the difficulty in shutting these businesses down can be traced to the fact that the whole gamut of procedural safeguards is available to the large dealers who possess ample resources to fight the Government tooth and nail. They are able to win prolonged trials followed by 2 or 3 years of further delays caused by appellate proceedings. All the while they can carry on with business as usual.

It is my hope that a string of four or five convictions in these cases would throw a sufficient scare into the pornography crowd to frighten many of them out of the business.

But even so, there would still be major gaps in the current barriers against obscenity. These must be closed to prevent the dealers in smut from shifting their activities to unregulated territory.

There are two primary areas where I believe additional Federal laws would assist in curbing the problem. One stems from the fact that the pandering law set forth in title 39 of the United States Code does not apply to unsolicited first mailings. Consequently, a strengthened version of this law should be passed to reach the millions of original mailings of crude advertisements that openly appeal to the erotic interests of viewers. I have discussed this aspect of the problem in depth when I testified before the Subcommittee on Postal Operations relative to H.R. 10867.

Today, I would like to focus my attention on the second area where the criminal laws might be strengthened—the protection of children from exposure to material which is obscene as to them. For strangely enough there is no national law which is now aimed squarely at protecting minors from obscenity.

The legislatures of 39 States have adopted some type of special prohibition against the exposure of minors to obscene materials and it is high time that Congress does the same.

Mr. President, there is no question in my mind that the Government has an interest and an obligation to restrict the distribution in commerce of sexually oriented material which is directed to minors or is delivered with a reckless disregard to whether or not it will reach minors.

That society has a legitimate interest in regulating the dissemination to children of material which is objectionable as to them, but which could not be regulated as to adults, has been settled by the second Ginsberg case in 1968 (390 U.S. 631). In this case, the Supreme Court specifically decided that society has a strong and abiding interest in protecting the welfare of young people which includes the power to regulate or control pictures and printed material that are obscene to minors.

That a legislature may properly determine that children should be protected from obscene matter has also been settled by the Ginsberg decision. There the Court looked squarely at the question whether a State can reasonably find that obscene matter will undermine the moral, ethical, and mental development of children and concluded:

> The possibility of harmful effects to youth cannot be dismissed as frivolous.

Commonsense will tell most people that the exposure of young children to material that portrays sexual promiscuity or abnormal behavior in a crude manner might have a destructive influence on such children. The trouble is, of course, that this kind of event can initiate an unhealthy direction or attitude in a person at a crucial stage in his life's development when patterns of behavior and ways of thinking are being formed.

The record contains persuasive statements by responsible medical experts that confirm this danger. For example, in 1963 the New York Academy of Medicine published a report on the medical aspect of indecent publications sold at newsstands and circulated by mail.

In this report the academy said:

> Although some adolescents may not be affected by the reading of salacious literature, others may be more vulnerable. Such reading encourages a morbid preoccupation with sex and interferes with the development of a healthy attitude and respect for the opposite sex. It is said to contribute to perversion.

The academy further stated:

> The perusal of erotic literature has the potentiality of inciting some young persons to enter into illicit sex relations and thus of leading them into promiscuity, illegitimacy and venereal disease.

The 122-year-old academy restated these positions in November of 1964, in a letter sent to former President Johnson. At that time the academy added:

> The problem of salacious literature has deep-going sociomedical implications for the entire Nation and requires action on the Federal level.

Mr. President, I am aware that the medical profession does not adhere to these views universally. I have also noted the claims made in certain law review articles and medical journals that not much research exists to show what effect pornography has on the social actions of individuals.

These articles refer, of course, to the absence of controlled experimental investgations. They fail to consider the wealth of expert testimony which is available from psychiatrists, law enforcement officers, and other professionals who have had contacts with consumers of obscenity.

The prevalent view held by these persons has been succinctly expressed by Dr. Donald Hammersley, chief of the professional services wing of the American Psychiatric Association, who kindly prepared a bibliography at my request covering some studies in the obscenity field.

Dr. Hammersley commented on this research material as follows:

> I don't believe any of these references offer positive proof that pornography has a bad effect on children. I believe psychiatrists would agree that, in general, glorification of perverse, sadistic, and anti-social activity in material available to children could adversely affect a child's psychosocial development.

This pretty well sums up the generally accepted view that the potential for corruption is certainly present in obscene materials. Clearly, none of the skeptics can point to any empirical evidence that would prove the opposite.

Mr. President, I wish to emphasize one point about my suggestion. I do not feel that Congress is limited to one ground alone in order to act on legislation to protect children.

Whether or not we decide that pornography is inimical to children, there is a second concept which I believe offers a strong basis for enacting a special law with respect to minors. I am speaking, of course, about the power of Congress to protect the constitutional guarantee of freedom of privacy.

To me privacy deserves one of the highest spots on the list of individual freedoms. It embodies the essence of the sanctity of a man's home and the right to enjoy the privacies of his life. In short, it stands as the bulwark of a man's right "to be let alone."

The right of privacy has been distinguished as a distinct and separate right in American law for the past 80 years and is regularly winning expanded interpretations.

The reason for this is easy to see. As rapid improvements in the means of communications and transportation have continued to bring people closer and closer together, these same developments have made it increasingly simple for each person's life to be intruded upon by others who seek to exploit by unfair means.

Thus it is that the courts now recognize the authority of the State to protect a man's feelings as well as his limbs. The exercise of this power is particularly strong when the threat to privacy involves an invasion of a man's home.

There is a Supreme Court decision close at hand. In *Breard* v. *Alexandria*, 341 U.S. 622 (1951), the Court considered the validity of a municipal ordinance

forbidding persons from going upon private residences, without prior invitation to solicit orders for the sale of magazines. The Court upheld the ordinance as a proper means to protect householders against "uninvited intrusions into the privacy of their homes."

A major principle announced by the Court is that when the substantive right of free speech collides with the personal right of privacy, there has to be an adjustment of both rights. In the words of the Court, the privilege to engage in interstate commerce or free speech cannot be permitted to crush "the living rights of others to privacy and repose."

The most recent enunciation of the rule was made by a three-judge Federal court convened in California to consider section 4009 of title 39, the pandering advertisement law. In upholding the power of Congress to secure the right of privacy by restricting mailings of objectionable pandering advertisements, the court said:

> To require a commercial enterprise to strike a name from a mailing list seems little burden to impose to guarantee that dimension of privacy to an individual, otherwise helpless in his home, to "turn off" pandering advertisements which may be erotically arousing or sexually provactive to him and his family.

In my opinion, these decisions—backed up by related cases such as *Griswold* v. *Connecticut*, 381 U.S. 479 (1965)—make it crystal clear that the right of privacy is included among the fundamental personal rights reserved to the people by the Constitution.

In applying this doctrine to the proposal for adopting stringent new regulations over the delivery of smut materials to young persons, I am convinced that the right of privacy will be held to encompass the right of parents to raise their children in their own way.

The indiscriminate distribution of smut to minors is undermining the ability of parents to educate their children in a decent way as to the purpose and meaning of sex. For this reason, the vast majority of parents seek our assistance in shielding their families against the massive promotion techniques used by multimillion-dollar operators. The intervention of organized crime into the arena makes it doubly our duty to provide Federal help in preserving the sanctuary of the American home.

Mr. President, my studies in this field have turned up some data which increases my belief that Congress may enact much stricter controls over the dissemination of obscene materials to children. I will start with the fact that there is a child under 18 living in six out of every 10 American homes. I say 18 because this is the age limit proposed in most of the pending bills to define when a person is a child and when he is not.

Next, we can note that there are 35 million children in the age group under 18. Clearly, this is a sufficient number to deserve protection at the national level.

Finally, the official Labor Department statistics disclose that at least one-third of American wives in families with children under 18 are employed outside the home. The highest working force rate among women of all ages is that of married women with children ages 6 to 17. These ladies represent 45 percent of the entire women's work force and total over 6 million persons.

From this, Congress might properly infer that several millions of children who have arrived at a crucial, inquisitive stage of life will have an unsupervised opportunity to open the mail before their working parents return home.

Based on the above facts, it can be concluded that the access of children to direct advertising mail is so great that additional requirements should be imposed to decrease the chances they will be exposed to matter which is harmful to them.

With this said, I shall turn to an examination of the specific provisions which it would be appropriate to include in a child-oriented statute. I have sponsored S. 1706, together with the Senator from Alabama (Mr. ALLEN), on behalf of 21 Senators, and I have no doubt that the enactment of this measure would make a significant dent in the illicit traffic generated by the smut peddlers.

But rather than describing the features of our proposal, I believe the best way to approach this aspect of the subject would be to discuss the provisions of the administration bill, S. 2073, which has been endorsed by 46 Senators.

The bill has by far the greatest number of sponsors of any pornography measure in the Senate, and it holds the added distinction of having been ordered favorably reported by the Subcommittee on Juvenile Delinquency for action by the full Judiciary Committee. This action was taken, I must note, without the benefit of any hearings.

Obviously, S. 2073 has the inside track on the Senate's legislative program. Therefore, I will direct my comments to the ways in which I believe that proposal can be shaped into a workable and effective statute.

Mr. President, the first suggestion I shall make is that the definition section should be tightened up so that it follows the standards applied by the New York State statute that was upheld in the second Ginsberg case.

Unfortunately, the provision set out in clause (iii) of subsection (a) omits certain essential elements that have been traditionally required by the courts as a test of obscenity.

For example, the statute would allow the material under question to be considered standing alone, although the usual court standard is to view the objectionable matter "taken as a whole" in the setting in which it appears. Obviously, the omission of this element can cause a significant difference in the decision of whether or not an item is obscene. Looked at by itself, one picture in a magazine or one line in a book may appear indecent. But when taken in the context of the article or story to which it belongs, it may seem proper.

For this reason, I am afraid that unless the bill is changed it will be applicable on its face to many legitimate magazines, newspapers, and books that no one wanted to cover.

An even greater oversight than this has been made, for whoever put the definition language together has left out what has to be the truly basic standard applied in each court decision on obscenity. I refer to the absence of any requirement that objectionable material must appeal to the prurient interest of the consumer.

Consequently, I suggest that the Senate adopt an amendment that will make the bill conform to the standards set forth in the New York statute.

In my view this one change is absolutely crucial to the validity of the entire law. I urge my colleagues to read the case of *Interstate Circuit* v. *Dallas*, 390 U.S. 768 (1968) if there are any lingering doubts about tampering with the constitutional definition of obscene matter.

In this case the Court held that an ordinance of the city of Dallas was invalid because the standards used to define impermissible matter were not definitely and narrowly drawn. The Court decided that this was so even though the law had been adopted for the purpose of protecting children.

The Court drew a comparison between the New York statute and the Dallas one, noting that the New York statute had been drawn "in accordance with tests this Court has set forth for judging obscenity."

That this approach will be effective is proven by the fact that the conviction upheld in Ginsberg involved the sale of four "girlie" magazines. If the Court is willing to find that pictorial magazines are harmful to minors, I am certain it will find that the utter garbage which is infesting the mails is likewise obscene when sent to minors.

In view of this signal by the Court, it is essential that the New York type of definition is the one we should use.

Mr. President, the second amendment I suggest for consideration is designed to keep the impact of the bill on target. Remember that the source of national outrage about smut is caused by a few major dealers engaged in commercial exploitation.

But the way subsection (b) is now worded, it would bring within its reach the case of relatives or friends who use the mails and interstate carriers without any purpose of material gain.

To close this loose provision, I recommend the proposed law be amended to hit at persons who distribute illicit products for compensation or other commercial ends. This would be similar to a requirement in the New York statute and would meet the suggested form included in the model penal statute drafted by the American Law Institute.

The third change which I hope the Senate will consider is whether the criminal sanctions of the bill should be expanded to reach the manufacturer and producer of pornographic materials.

The only person who is covered by subsection (b) is the one who deposits matter in the mail or transports merchandise in commerce.

Thus it appears that any maker of obscene films or publisher of smut books who wants to evade the penalties of the law can do so by contracting with an

independent distributor to handle the actual printing, mailing, or shipping of his product.

There is a major smut mill in Phoenix that performs just this kind of service on behalf of publishers in many different States, and I think the law should be stretched far enough to reach its kind of operations. I am referring to the Valley Paperback Manufacturers, Inc., which is engaged in a $4 million business printing wildly indecent books by the ton for 14 U.S. publishers.

According to the Phoenix Police Department's special investigation bureau, Valley Paperback takes completed printing plates from the publisher, runs off an estimated 35,000 sex books each day, and ships them back to the publisher by truck, mail, and REA for eventual distribution to the public.

Saul Simkin, president of the company, bragged to an Arizona Republic reporter:

> I have the most beautiful operation of its type in America today . . . Sex is here to stay and nobody is ever going to tell me what to print, ever.

In order to shake up the brazen activities of operators of this kind, I feel the Senate should examine whether it is feasible to expand the scope of subsection (b) to make it a crime to print or manufacture lewd material if the accused knows or intends that such material will be deposited in the mail or transported in commerce in violation of the statute.

The next amendment I wish to bring before the Senate also involves the inherent constitutional validity of the proposed statute.

In my opinion subsection (c) of the bill is incapable of passing muster in the courts.

This provision says that indecent matter which is sent to a household where a child resides shall be considered as having been intended for delivery to a minor. An exception is granted only when the material is sent in an envelope or wrapper that "completely conceals the contents" and is "clearly, specifically, and personally addressed to an adult."

Frankly, I cannot see how the courts will allow the lawmakers to pull themselves up by the bootstraps in this manner, and I must caution the Senate against adopting the provision.

It must be remembered that we are not talking about situations where the dealer can actually see the customer. Here where the business is conducted through the mails or in interstate commerce, the distributor does not see who his customer is.

Therefore, he cannot be charged with knowing the age of the person who opens the mail unless there is additional, reasonable proof of this presumed fact.

Mr. President, I must inquire, how is the sender supposed to keep up the running account of each birth and change in age of family members that he must be aware of in order to know at which homes children are residing? And, if a minor does live at a residence where a dealer sends his product, can it fairly be said that the item is designed for delivery to him if he is only 10 months old?

There is only one conceivable way in which subsection (c) might make sense and that depends on whether it will meet the criteria laid down by the Supreme Court for statutory presumptions. On the basis of the High Court decision in the case of Leary against United States, May 19, 1969, I fear that subsection (c) will not make it.

The Court announced in Leary that it will not uphold a statutory presumption unless the presumed fact is more likely than not to result from the proved fact.

Applying this test to the subsection (c) presumption, the proved fact would be that lewd material was sent to a home where a child resides. The presumed fact would be that the product was meant to be delivered to the child.

In order for this to be a rational inference, it would have to be shown that most mailings and interstate shipments of smut are in fact received by persons who are younger than 18.

Next, it must be shown that most dealers in smut are aware of this fact and have deduced that unless their product is mailed in the exact form described in subsection (c) it will be delivered to a child.

Mr. President, after a long study of existing materials, I am persuaded that there simply is not any direct or circumstantial data available from which these conclusions may follow.

In the course of my search for evidence, I have been in touch with the Bureau of the Census, the Post Office Department, the Justice Department, the Commission on Obscenity and Pornography, and the Library of Congress to learn if they have any information bearing on whether most smut mail and deliveries are intended for or opened by children. In each instance the reply was negative.

The result is the same if we turn to private sources. I have discussed this question at length with officers of two national associations representing firms active in the mail advertising industry to see what surveys or statistics they might possess.

But again, the response was negative. Neither the Mail Advertising Service Association nor the Direct Mail Advertising Association knew of any evidence from which it may be concluded that most mail of a commercial advertising nature is opened by minors.

In fact, the only information that came to light points the opposite way. According to a National Consumer Survey made for the Direct Mail Advertising Association in 1964, mail advertisements are opened by the head of the family in 75 percent of American homes. This certainly refutes the idea that children open most of such mail.

Mr. President, I wish to underline for the record that the member firms of these two associations are reputable companies, all of whom refuse to have anything to do with the smut trade.

They do possess a world of expertise about the direct advertising field and have been very generous in helping me pursue this investigation.

Even if the evidence had been different, there are other problems which might crop up. For example, I suspect that the U.S. attorneys would be hard put to explain to a court the differences between the requirements that an envelope or wrapper be "clearly, specifically, and personally" addressed. I assume that for an envelope to be "personally" addressed, it must show the name of the person to whom it is directed. But what reasonable distinctions in construction can the court give to the other terms?

Webster's defines "specific" to mean "precise" or "accurate." Applying this usage to the bill would mean that a person can be liable for conviction because of a misspelled name or an erroneous initial.

What then of "clearly?" I wonder what could be more clear than the personal name of the addressee. In his search for a distinct interpretation, perhaps the judge looking over this word will decide that the only meaning left open is for all envelopes or wrappers to be free of smudges and marks.

In any event, I feel it is apparent that the use of this triumvirate of requirements is open to challenge on the ground of vagueness.

The fifth amendment I propose is that subsection (d) be stricken from the bill. To me this provision will create a giant loophole which the purveyors of filth will leap through with impunity.

My concern lies in the fact that this subsection would create a complete defense to a charge of violating the law for any defendant who has received a declaration from the addressee stating that he is an adult.

To me this means that every smut dealer will be given a ready-made defense whenever a minor fills out a coupon on which he lies about his age.

It is a routine practice for these operators to put an item relative to age on their order forms right now so that such a defense may negate the whole purpose of the statute.

To the contrary, I believe we should shift part of the burden of keeping this unsought material out of homes where it is not wanted to the smut peddlers themselves.

For example, the Senate might consider imposing a requirement on the dealer to compile and use a professionally designed mailing list that gives a high degree of certainty that it contains the names of adults only.

Practically every one of the dealers causing the present trouble already possess automated equipment which they use in making their deliveries. Therefore, a requirement of this kind would be entirely reasonable.

Mr. President, the state of art in the list preparation field is at a point of extraordinary sophistication. The accomplishments of reputable firms in the direct advertising trade prove that the technology is at hand to put together lists that will meet my proposal.

For example, R. L. Polk & Co., of Detroit, has compiled a list which contains precise information on more than 60 percent of all families in the United States. Labeled the "Household Census List," this amazing creation tells a sub-

scriber the names of the heads of households in 30 million American families, the names of their wives, the number of children in each family, the age range of children, and many other precision factors on a household-by-household basis.

Polk certainly is not inclined to deal with anyone in the pornography business. As a matter of fact, Polk carefully investigates the integrity of each of its customers before renting one of its lists.

But the fact that human ingenuity can develop such a remarkable list as the one Polk has produced should be reason enough for the Congress to investigate fully the question whether it would be reasonable to require pornographers to create adult-only address lists.

There are known ways by which these lists can be kept fresh so that they maintain an accuracy factor of better than 90 percent. While this might not be foolproof, it would provide a much greater assurance than present practices do, that smut garbage will not be addressed to a child.

The final amendment that I wish to propose is the inclusion of a provision which preserves concurrent jurisdiction for the States in the antiobscenity field.

The question of whether Congress intends to occupy the field to the exclusion of State and local laws should not be left for the courts to interpret. Congress has chosen to add a nonpreemption feature in 15 of the Federal criminal statutes it has enacted during the past 5 years, and I propose that similar language be put in the pending legislation.

Mr. President, I ask unanimous consent that a list identifying these 15 criminal statutes be printed at the end of my statement.

Mr. President, in closing I want to express the hope that all Members will be sufficiently interested in finding an effective way to control this menace that they will look at the problems closely. In the words of an Arizona physician who has expressed to me his grave concern about obscenity in the mails, let us see that the law which we pass "will be written responsibly and intelligently so that it will even pass the scrutiny of a permissive Supreme Court Justice." Let us give our pledge to the millions of concerned parents and decent citizens who are looking to us for help that we will pass a law that is effective, workable, and successful in stamping out this danger to America's youth.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

FEDERAL CRIMINAL STATUTES WHICH PRESERVE CONCURRENT JURISDICTION FOR THE STATES: 1964–69

1964

Bribery in sporting events

1. Public Law 88–316 §1(a), 78 Stat. 203

Civil Rights Act of 1964

2. Public Law 88–352 §708, 78 Stat. 262
3. Public Law 88–352 §1104, 78 Stat. 268

Lake Meade National Recreation Area

4. Public Law 88–639, §7, 78 Stat. 1041

1965

Drug Abuse Control Amendments of 1965

5. Public Law 89–74 § 10(b), 79 Stat. 235

1966

Federal Metal and Nonmetallic Mine Safety Act

6. Public Law 89–577 §19, 80 Stat. 784

Embezzlement and theft from pipeline facilities

7. Public Law 89–654 §1(c), 80 Stat. 904

Breaking and entering carrier facilities

8. Public Law 89–654 §2(b), 80 Stat. 904

Fish and wildlife conservation and protection

9. Public Law 89–669 §4(c), 80 Stat. 928

1967

Partnership for Health Amendments—Licensing Laboratories

10. Public Law 90–174 §353(k), 81 Stat. 539.

1968

Civil disorders and riots

11. Public Law 90–284 Title X §1002(a), 82 Stat. 91
12. Public Law 90–284 Title I §104(a), 82 Stat. 75

Extortionate credit transactions

13. Public Law 90–321 § 202a, 82 Stat. 162

Firearms regulations

14. Public Law 90–351 Title IV §902, 82 Stat. 234
15. Public Law 90–618 Title I §102, 82 Stat. 1226

1969

None (Through Public Law 91–81).

DETERIORATION OF THE ENVIRONMENT

Mr. McGOVERN. Mr. President, it is increasingly difficult, if not impossible, to discuss the accelerating deterioration of our environment in calm and moderate terms. The outlook is too alarming.

Some lakes are dead long before their time; others are dying at a vastly accelerated rate. Rivers and streams, because they are treated like sewers, are beginning to act like sewers. More and more our air is befouled by our annual offering up of 133 million tons of refuse. We are less and less able to find space to put the 1,800 pounds of solid garbage that each American discards each year.

We are learning very late in the game that our natural surroundings do not have an endless capacity to absorb our abuse; that this generation or the next can distort the balance and use up the room. Yet we continue, as the terms "conservation" and "preservation" become inadequate descriptions of the necessary response, to be replaced by "reclamation" and "salvage—if possible."

Folksinger Pete Seeger, now engaged in an important effort to clean up the Hudson River, has spoken of the paradox of "standing in garbage up to our knees, firing rockets to the moon." Someone else has suggested to me that if by some illogical happenstance the Southeast Asia domino theory were to prove true in its furthest extreme it would make no difference anyway—the North Vietnamese would sail their junks and sampans into San Francisco Bay, determine that the United States was uninhabitable, and return home as quickly as possible.

The causes are several. A growing population creates more waste and takes up more space. Our garbage has been made increasingly indestructible, as iron products have been replaced with anticorrosive plastic and aluminum containers.

But much of the problem is economic. Economic considerations pervade decisions to pollute and despoil, and economic considerations also play a central role in our decisions whether or not to protect, preserve, or enhance our natural resources.

In this connection, I invite the attention of Congress to a thoughtful and worthwhile paper presented to the National Water Commission here in Washington earlier this month. I am proud to say that it was prepared by a constituent of mine, Mr. Kenneth Holum, whose intimate understanding of water resources issues has most recently benefited the country through his service as Assistant Secretary of Interior for Water and Power throughout the Kennedy and Johnson administrations.

Speaking on behalf of Mid-West Electric Consumers Association, Mr. Holum declared:

> An individual, a community, or a nation that makes an investment in its resources or environment only if, by doing so, it will be economically profitable, has adopted a policy of exploitation. . . . Economic analysis can be a useful tool to assist decision makers in the resources field. It must never become the only or even the principal basis for decision making. We must never accept the idea that we will not plant a tree, create a park, or clean a stream unless we can first prove that it is economically advantageous to do so.

He suggested broader bases for our resources decisions, and also called for their application to determine where we should carry out the enhancement of resources:

> Although we agree that water supply, recreational and environmental needs of the country's most congested areas must be supplied, we contend that aggressive, soundly conceived, Federally assisted programs that provide and will promote development and economic opportunity in other areas of the country, and hence diminish future population pressures on the valleys of the Hudson and the Delaware, the shores of the Great Lakes and Southern California, are urgently needed, even if we lack the techniques for calculating the political, social and economic benefits, say, to Philadelphia, of programs that keep people in the Dakotas.

Mr. President, I ask unanimous consent that the statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF THE MID-WEST ELECTRIC CONSUMERS ASSOCIATION FOR THE NATIONAL WATER COMMISSION, WASHINGTON, D.C., NOVEMBER 6–7, 1969

While the Congress was considering the legislation that authorized the creation of this Commission, I had several opportunities to express my support for the authorizing legislation to members of Congress and the Congressional Committee. I supported the legislation because I was convinced that a review of major problem areas in the water resources field, together with a careful reexamination of established policies and procedures relating to Federal activity in water resources by a top-flight citizen's group was urgently needed and certain to be productive.

Now that the legislation has been enacted, the members of the Commission selected, the

staff organized, and the work begun, I am even more optimistic that your effort will identify policy changes and solutions to water management problems that will contribute to wiser use and better management of a most important natural resource.

I appear before you today representing the Mid-West Electric Consumers Association. Mid-West's members are the consumer-owned electric utilities of the Missouri Basin. The Association exists because these utilities believe that joint action enhances their ability to provide reliable electric service at low cost. They are anxious to be good citizens in their states and their region of the country. As good citizens they support and promote wise resources management.

The ideas that we submit today for your consideration represent essentially the point of view that I have developed as a citizen who still insists that home is a farm in northern South Dakota. My farm experience has been supplemented by membership in the Missouri Basin Survey Commission, service in the South Dakota legislature, affiliation with a variety of cooperatives and conservation organizations, and service as a public official. Mid-West has reviewed this paper and supports the ideas presented.

Because your time is limited and because you have so much expertise available, we propose to limit our presentation to a few concepts that we consider of great importance nationwide, and of particular importance to the upper Midwest. Specifically, we will give you our views on (1) the financial analysis of water resource projects, (2) the urgent need for the nation's decision makers to recognize that the completely different circumstances in the various regions require a variety of approaches and policies to fit these needs, (3) the almost limitless opportunities that exist for reducing the pressures on the resources of the congested areas of the country by developing the under utilized Missouri Basin.

On August 14 we appeared before the Water Resources Council in Omaha, Nebraska, to present our comments on the Council's decision to raise discount rates used in evaluating water resources development projects. To save you time I will not repeat those comments, but I have attached copies of that statement to the submission made available to you today.

When you review that paper you will find us much more disturbed by the implication that this generation should not do anything to improve or protect the nation's resources unless you can first prove to the economists that benefits discounted to present net worth exceed costs then we are by changes in the discount rate itself. Our filthy rivers, eroded hill sides, and gullied fields demonstrate that we have plenty of exploiters and despoilers without making exploitation a national policy.

An individual, a community, or a nation that makes an investment in its resources or environment only if, by so doing, it will be economically profitable, has adopted a policy of exploitation.

We feel confident that your Commission will recognize our generation's obligation to so invest some of our earnings in the land that has treated us so generously, and will not yourselves, put on blinders that greatly limit your vision, as so many articulate and influential economists of our time have done.

Let's not be fooled by fancy terms and phrases.

Economic analysis can be a useful tool to assist decision makers in the resources field. It must never become the only or even the principal basis for decision making. We must never accept the idea that we will not *plant a tree, create a park,* or *clean a stream* unless we can first prove that it is economically advantageous to do so.

If we are unwilling to invest in our environment and our resources without first establishing that it will be profitable, then I suggest that we double and redouble our rate of investment in the space program. With our growing population and all of our *increasingly* wonderful machines, a generation of exploitation will make the Moon and Mars appear attractive and pleasant sanctuaries for our children. American will have become a wasteland.

Our concern for the proper understanding of benefit-cost and its application in planning is directly related to our second concern—that Federal policy makers understand that Federal policy must be broad enough and sufficiently flexible to accommodate the differing problems and opportunities of our country's different regions.

We all understand that the economies of scale almost inevitably reduce the unit cost of the product as we are able to increase the size of the facility. Because this is true, facilities designed to serve the congested areas of the country are almost certain to produce the lowest unit costs and show the best in benefit-cost analysis unless we add completely new dimensions to our economic analysis.

Although we agree that water supply, recreational and environmental needs of the country's most congested areas must be supplied, we contend that aggressive, soundly conceived, Federally assisted programs that provide and will promote development and economic opportunity in other areas of the country and hence diminish future population pressures on the valleys of the Hudson and the Delaware, the shores of the Great Lakes and Southern California are urgently needed, even if we lack the techniques for calculating the political, social and economic benefits, say, to Philadelphia of programs that keep people in the Dakotas.

Before discussing this matter directly however, I should like to discuss further water resource development more generally.

The reclamation program was initiated in 1902 because President Roosevelt and the Congress recognized that the 17 Western States could not develop and prosper without large-scale water resources development. Federally-assisted water resource development has stimulated agricultural production and economic growth in much of the West.

As a matter of fact, some of the nation's largest and fastest growing cities recognize that their growth could not have occurred without the availability of Federal reclamation water. Many of the country's most productive agricultural counties would still be desert sand if there had not been a Federal reclamation program.

Inevitably, as the program has developed and Congress has provided the funds, decisions have had to be made as to the order in which projects were constructed. As a result many communities are now looking for second or third round projects to supply supplemental irrigation water or additional municipal and industrial supplies, while whole states are still awaiting their first significant reclamation projects.

Almost inevitably the economies of scale will produce higher benefit-cost ratios for those second round projects. Supplementing the economies of scale factor, the economic growth stimulated by earlier development will increase the area and regional demands for water-associated recreation and more joint costs will justifiably be assigned to recreation and fish and wildlife enhancement. As a result, the second round project has an excellent benefit-cost ratio.

That is excellent. No doubt building the facility will serve the national interest. However, it should not receive Federal assistance at the expense of a region where economic development has not occurred because the region is waiting for its "first round" Federally-assisted water projects. This is exactly what will occur if we overemphasize customary economic factors and benefit-cost ratios in allocating the dollars that are available.

By any standard of comparison you will find that the Federal Government has invested very little in facilities that will put Upper Missouri River Basin water to beneficial use in the States where that water is produced. Coincidentally, the region has low levels of economic activity and several of the States are actually losing population.

Existing schools, roads, libraries, electric, water and sewer facilities and other public facilities—as well as private commercial, industrial facilities, and housing—are being vacated or used to less than capacity.

Much of the rest of the country, on the other hand is struggling with problems of congestion, including but not limited to poor housing, overcrowded schools, mushrooming industrial development—air and water pollution and inadequate opportunities for wholesome outdoor recreation.

Many of these areas have grown to a size, and developed problems so that many of their residents would prefer that they grow no longer.

The water in the Missouri River system, much of it already stored in the great dams in the rivers in Montana, North and South Dakota providing flood control and navigation benefits to the down-stream states, and low cost electric power more generally in the region, could alter economic conditions if used to stabilize the agricultural economy in the prairie States too, and provide adequate supplies of good quality water for municipal and industrial use in the cities and towns, and enhance the water related recreation within the region.

We believe that dollars invested in water and related land development in the Upper Missouri Basin will serve two urgently needed purposes simultaneously. First, by increasing the profitability of its agriculture through the availability of irrigation water in drought years, and better controlled use of water in all years, which will induce industry to locate where adequate quality water is always available and enhance the region eminently.

Those dollars will reverse the population trends that are producing dying towns, empty farmsteads, and inefficient public services of all types in those high plains States.

Simultaneously, and perhaps even more important from the National point of view, stabilizing the agricultural economy of this region and providing opportunities for industrial development in these underdeveloped States can contribute substantially to reducing the population pressures on the overcongested areas of the country.

Although I have been unable to uncover any authoritative analysis, even a superficial look makes it obvious that both the initial investment in public services and the continuing cost of operating and maintaining these facilities is substantially greater per family in our crowded metropolitan areas than it is in rural America.

We have dedicated much time and effort to the development of economic analysis and cost-benefit ratios for water resource development projects that provide new economic opportunity in the country's underutilized areas. Certainly it must be just as important that we know before making the decision that permits the underutilization of resources in the upper Midwest to continue, what it is going to cost both the public and private sectors of the economy to provide economic opportunity and public services for the same number of people in the congested areas.

The "tentative program of studies of the National Water Commission", dated July 24, 1964, is an imposing document. It represents

an excellent outline of the major problems in the water resources field. Several of the "studies" you have identified tend to underscore the complexity and high cost of public services and pollution abatement in highly congested areas. Study 24 is directed to analysis of the methods used for the economic evaluation of water resource development projects and looks to their improvement. This is an appropriate study.

We should like to urge one addition to your study program. We agree that decision makers should know the cost of water resource development. We feel strongly that they should know the cost and benefits of water resource development but ALL benefits tangible and intangible!

We feel strongly that they should know the cost of failing to develop those resources.

If we do not develop the water and related resources of the Upper Missouri Basin we will have to provide homes, economic opportunity, and public services for its families some place else. Substantial public and private investments will be required.

Would it not be cheaper in strict dollar and cent terms to provide the basis for fruitful lives for them—where they are?

How should this factor be taken into consideration in benefit cost analysis in related water and related land resources in the Upper Missouri Basin and elsewhere?

We urge you to study or to sponsor the study of this matter and then develop recommendations in this regard for the Commission's Report.

We are confident that more and complete economic analysis will demonstrate that developing the resources of the Missouri Basin is not just a matter of equity and fairness, but that it makes good economic sense as well.

Mr. John Fischer, in the "Easy Chair" column in the November 1969 issue of *Harper's Magazine* describes accurately, I believe, what will result if we do not reverse present trends and policies. He comments:

"All I can attempt in this space is to indicate the main thrust of their argument. Each of the commissions concluded independently that it would be a hideous—and expensive—mistake to force the next 100 million Americans to live in our present cities. Yet that is precisely where they will end up, if present trends are permitted to continue. Already two-thirds of our population is living in some 230-odd metropolitan areas: cities of 50,000 and more, together with their suburbs. According to the Census Bureau projections mentioned earlier, virtually all of the anticipated increase will crowd into those same cities unless we do something to divert it elsewhere. Not because everybody wants to live up that way. People are being pushed in that direction by government policies of long standing—the farm program, the welfare system, the location of science centers, the obsolete rules for building public housing and insuring home mortgages, the way government contracts are let. None of these policies was meant to shove people into the already clotted-up metropolitan centers. Each of them was originally devised for an entirely different, and well-intended, purpose. Only belatedly did it become apparent that they are, as an unexpected by-product, influencing the direction of future growth—and that the cumulative result may well be a national disaster."

In this connection we would like to respond directly and specifically to one question you have raised. We favor the retention of the 160 acre limitation but look with favor on the so-called 160 acre equivalency concept. We urge development of the water resources of the Upper Missouri Basin to provide additional economic opportunities. Certainly we would defeat our whole case if we did not support controls to make certain that those benefits are shared widely.

AN ECO-SYSTEM APPROACH TO MAN'S SURVIVAL

Mr. PERCY. Mr. President, at the same time that we are exploring the regions of outer space, our own planet is in jeopardy of becoming uninhabitable.

In recent years, concerned citizens have expressed dismay over various aspects of environmental pollution: air, noise, water, or visual. Too often, however, a piecemeal approach has existed. Thus, while attacking one aspect of water pollution, for example, many others have gone unattended. Or, while attempting to deal with the specific, technical aspects, the general impact of our everyday life has been ignored.

Environmental pollution is not merely the pumping of industrial wastes into our waters or the emission of noxious gases into our atmosphere. It may also include the paving over of meadows and fields, the pasturing of cattle in confined lowland lots, the underfunding of mass transit systems while enhancing auto vehicular traffic, or the supplanting of returnable glass containers by "disposable" nonreturnable ones.

The Leo Burnett Co., of Chicago, inserted in Time magazine of November 14 a moving public interest message on the need "for all good men to come to the aid of their planet." This statement clearly warns us:

Together, and left alone, land, air, and water work well as an "eco-system" to maintain the great chain of life, and the delicate balance of nature, from ocean depth to mountain top.

But man, since he first rose up on two legs, has been tampering with this system. He cannot help it. Everything we do alters our environment: the ways we grow food and build shelter and create what we call "culture" and "civilization."

Now, entering the last three decades of the 20th Century, we face the shocking realization that we have gone too far too fast and too heedlessly—and now we are forced to cope with some of the consequences of our "progress" as a species.

Mr. President, this warning must be heeded. My valued colleague and friend Representative McCLORY has been raising the cry of caution and concern for many years, now, as have so many other Members of Congress. But there is still so much for us to do. Especially, there is the need to alert the public of these dangers. The action of Leo Burnett in making this excellent statement and warning available to the public certainly deserves our commendation. I ask unanimous consent that the statement be printed in the RECORD.

There being no objection, the message was ordered to be printed in the RECORD, as follows:

NOW IS THE TIME FOR ALL GOOD MEN TO COME TO THE AID OF THEIR PLANET

WHAT WE DON'T KNOW ABOUT THIS EARTH WE LIVE ON NOT ONLY CAN HURT US—IT CAN KILL US

What we don't know—or refuse to recognize—is that modern man has been altering his total environment so swiftly and suddenly that the whole "great chain of life" on this planet is endangered.

All of us live on a tiny space-ship which is hurtling through the universe at a speed 600 times faster than the fastest jet plane—carrying with it its own limited resource for sustaining life.

What we have now is all we will ever have to keep us alive. Having already set foot on the lifeless moon, we shall presumably find that we are the only creatures on our solar system. As lonely astronauts on our own ceaseless journey through space, what do we have as our basic equipment for survival?

Above us, a narrow band of usable atmosphere, no more than seven miles high, with no "new" air available to us.

Beneath us, a thin crust of land, with only one-eighth of the surface fit for human life. And around us, a finite supply of "usable" water that we must eternally cleanse and reuse.

These are the elements of man's physical environment. This is the "envelope" in which our planet is perpetually sealed.

Together, and left alone, land, air, and water work well as an "eco-system" to maintain the great chain of life, and the delicate balance of nature, from ocean depth to mountain top.

But man, since he first rose up on two legs, has been tampering with this system. He cannot help it. Everything we do alters our environment; the ways we grow food and build shelter and create what we call "culture" and "civilization."

Now, entering the last three decades of the 20th Century, we face the shocking realization that we have gone too far too fast and too heedlessly—and now we are forced to cope with some of the consequences of our "progress" as a species.

For, increasingly, all over the world scientists and statesmen and specialists in every field are coming to agree on the pressing paradoxes of our modern age:

That, as societies grow richer, their environments grow poorer.

That, as the array of objects expands, the vigor of life declines.

That, as we acquire more leisure to enjoy our surroundings, we find less around us to enjoy.

It is nobody's fault, and it is everybody's fault.

The real culprits are the three main currents of the 20th Century—Population, Industrialization, and Urbanization.

Together, these three swift and mighty currents of history have acted to foul the air, contaminate the land, pollute the waters—and to accelerate our mounting loss of beauty and privacy, quiet and recreation.

World population is growing at a rate that will double by the year 2000—only a brief three decades away—when nearly seven billion people will inhabit the earth.

Already, the poverty-stricken countries of Asia, the Near East, Africa, and Latin America contain 70 percent of the world's adults and 80 percent of its children. The most people are concentrated where the least food and goods are available.

Industrialization has added its own burden to the population pressure. The more we produce and consume, the more waste products we discharge into the air and water and land around us, where they do not "disappear," but last forever in one form or another.

Our natural resources—both renewable and non-renewable—are taxed to the utmost by industrialization. The U.S. water supply, for instance, remains at the same fixed level, but we are using four times as much per person as in 1900.

Yet, at the same time, the volume of waste waters discharged into our lakes, rivers, and streams has risen 600 percent so far in this century. Less than one-tenth of one percent of contaminating materials can kill fish life by consuming oxygen in the waters. (The de-salting of sea water for household and agricultural use on a large scale is a long way off.)

We now spew 150 million tons of pollutants into the atmosphere annually, and 90 percent of this consists of largely invisible but potentially lethal gases. This may reduce

solar radiation, and raise the temperature at the earth's surface. Some predict that this could conceivably melt the polar ice cap, thus flooding the coastal cities of the world.

Moreover, these contaminants are global in their effects; as the Bible tersely reminds us, "The wind bloweth where it listeth."

From the plains in Russia to the mountains of Switzerland, from the blue waters of the Pacific to the smokestacks of Chicago, the air is hazier, the smog is thicker, the sun dimmer. Throughout the world, the statistics are uniformly appalling—but the figures speak less vividly than the sad bewilderment of California school children who are now excused from outdoor games on those days when the atmosphere chokes their lungs.

Industrialization plagues the land as well as the air and waters. Our rise in synthetic technology has given us innumerable conveniences—but the roadsides are strewn with cans, bottles, and cartons, the dumps overflow, and in some cities it costs three times more to get rid of a ton of junk than to ship in a ton of coal.

Urbanization is perhaps the most menacing of the three converging trends that threaten our planet today.

In the U.S., land is being urbanized at the rate of 3,000 acres a day. One million Americans a year leave the rural areas for cities. Seventy percent of all Americans now live on 10 percent of the land; by the year 2000, some 85 percent will live in urban areas. And the same is happening all over the world. By the end of this century, most human beings—for the first time in history—will be born, live, reproduce, and die within the confines of an urban setting.

Each time we build a new highway, bulldoze a woods into a shopping center, or turn farmland into housing developments, we decrease the acreage that will grow food. Great progress is being made in the productivity of our soil, yet agriculture is now taking three to four million tons more nutrients from it than are being replaced each year.

The word "ecology" was devised exactly a hundred years ago—in 1869—to signify the study of the relationship between life systems and their environment.

"Ecology" is what everybody on this planet must start thinking about—and quickly—if we are to avoid irreversible changes within the closed system of our space-ship.

For everything around us is tied together in a system of mutual inter-dependence. The plants help renew our air; the air helps purify our water; the water irrigates the plants. Man, as a part of nature, cannot "master" it; he must learn to work with it—and with his fellows everywhere—to ensure that we do not alter the environment so drastically that we perish before we can adjust to it.

Mankind as a species needs esthetic as well as physical values—sweet rivers to walk by in solitude and serenity, and pleasant prospects even in the midst of industrial affluence. The constant din of urban life assails the ears relentlessly, and noise contributes its own ugly obligato to the disharmony of our surroundings.

"The world is too much with us, late and soon," as Wordsworth prophetically put it more than a century ago, "Getting and spending, we lay waste our powers."

We have laid waste our powers for too long, not merely by ignoring the warnings of dead lakes and noxious air and ravaged countrysides, but also by periodically killing off our bravest and our best in senseless warfare.

Now is the time for all good men to come to the aid of their planet.

We have the technical skill and resources. We have a common cause worth fighting for: a new kind of war to make the world safe for humanity against its own worst instincts.

Perhaps this mighty global struggle to restore the quality of our human environment may provide an effective and inspired substitute for national conflict and bloodshed.

Perhaps only a planetary view of man can guarantee our survival.

We have the weapons that enable us all to die together; can we not forge the tools that enable us all to live together?

TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

Mr. PELL. Mr. President, the report "Title I—ESEA—Is it Helping Poor Children?" has recently been issued by the Washington Research Project of the Southern Center for Studies in Public Policy in conjunction with the NAACP Legal Defense and Educational Fund, Inc.

The report in essence discusses the utilization of title I ESEA in a manner which does not attain the goal envisioned by Congress upon original passage of ESEA—improvement of the quality of education received by the disadvantaged children of our Nation. An excerpt from the introduction of the report best discusses the reasons for the report itself and synopsizes the findings. I ask unanimous consent that that portion be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT OF REPORT

INTRODUCTION

In 1965 Congress passed the Elementary and Secondary Education Act (ESEA), the most far reaching and significant education legislation in the history of this country. For the first time the national government recognized the necessity of providing Federal aid to elementary and secondary schools. For the first time, the special needs of poor children were recognized and effective ameliorative action promised through special assistance to school systems with high concentration of low-income children.

Our hopes that the Nation would finally begin to rectify the injustices and inequities which poor children suffer from being deprived of an equal educational opportunity have been sorely disappointed. Millions of dollars appropriated by the Congress to help educationally deprived children have been wasted, diverted or otherwise misused by State and local school authorities. The kinds of programs carried out with Federal funds appropriated to raise the educational levels of these children are such that many parents of poor children feel that Title I is only another promise unfulfilled, another law which is being violated daily in the most flagrant manner without fear of reprisal.

We have found that in school systems across the country Title I—

Has not reached eligible children in many instances;

Has not been concentrated on those most in need so that there is reasonable promise of success;

Has purchased hardware at the expense of instructional programs;

Has not been used to meet the most serious educational needs of school children; and

Has not been used in a manner that involves parents and communities in carrying out Title I projects.

This study examines what has happened to Title I in the four school years since ESEA was passed. This is not an evaluation of compensatory programs, but a report on how Title I money has been spent and how Title I has been administered at the local, State, and Federal levels.

Since passage of ESEA, Congress has appropriated $4.3 billion for the benefit of educationally deprived poor children—black, brown, white, and Indian children. Because most of these children attend inadequately financed and staffed schools, the windfall of Federal appropriations no doubt brings many improvements to these schools that these children never had. To hear the educational profession and school administrators talk (or write), Title I is the best thing that ever happened to American school systems. Educational opportunities, services, and facilities for poor children are provided. Some poor children are now well fed, taught by more teachers, in new buildings with all the latest equipment, materials, and supplies. Early evaluations of academic gain have not been so optimistic. Some school systems report that despite the "massive" infusion of Federal dollars, poor children are not making academic gains beyond what is normally expected. Some report moderate academic gain in programs and some report real academic improvement.

Despite these reports, the almost universal assumption about Title I is that it is providing great benefits to educationally disadvantaged children from low-income families.

We find this optimistic assumption largely unwarranted. Instead we find that:

1. The intended beneficiaries of Title I, poor children, are being denied the benefits of the Act because of improper and illegal use of Title I funds.

2. Many Title I programs are poorly planned and executed so that the needs of educationally deprived children are not met. In some instances there are no Title I programs to meet the needs of these children.

3. State departments of education, which have major responsibility for operating the program and approving Title I projects applications, have not lived up to their legal responsibility to administer the program in conformity with the law and the intent of Congress.

4. The United States Office of Education, which has overall responsibility for administering the Act, is reluctant and timid in its administration of Title I and abdicates to the States its responsibility for enforcing the law.

5. Poor people and representatives of community organizations are excluded from the planning and design of Title I programs. In many poor communities, the parents of Title I eligible children know nothing about Title I. In some communities, school officials refuse to provide information about the Title I program to local residents.

These practices should be corrected immediately. We recommend that:

1. The Department of Health, Education and Welfare (HEW) and the Department of Justice take immediate action against school systems where HEW audits have identified illegal uses of Title I funds, and where indicated, restitution of misused funds demanded.

2. HEW enforce the requirement for equalization of State and local resources between Title I and non-Title I in schools in districts throughout the country; in Mississippi such equalization be required by the 1970–71 school year as recommended by the Commissioner.

3. HEW immediately institute an effective monitoring and evaluation system to insure proper use of Title I funds; the Title I office be given additional staff and status within the Office of Education; and a capable director be appointed forthwith and made directly responsible to the Commissioner of Education.

4. An appropriate Committee of Congress immediately conduct an oversight hearing and examine on a systematic basis the manner in which Federal, State and local school officials are using Title I funds.

5. The provision requiring community participation under Title I be maintained and strengthened.

6. Alternative vehicles for operation of

Title I programs be provided where State and local officials are unable or unwilling to operate effective Title I programs. For example, private non-profit organizations are permitted to operate Title I programs for migrant children.

7. HEW enforce the law; States be required to approve only those projects which conform with the Title I Regulations and the Program Criteria.

8. Congress provide full funding under the Act in order to ensure sufficient resources to help poor children.

9. All efforts to make Title I a "bloc grant" be rejected.

10. Further study be undertaken on issues raised in this report including:

a. use of Title I to supplant other Federal funds;

b. equitable distribution of funds to predominantly Mexican-American districts;

c. Title I programs for migratory and Indian children; and

d. relation between Title I and all other food service assistance programs.

11. Local school systems make greater effort to involve the community, including disclosure of information regarding Title I programs and expenditures.

12. Private citizens demand information and greater community participation on local advisory committees; denial of information and illegal use of funds be challenged by community groups and, where appropriate, complaints made to local, State and Federal officials; law suits filed and other appropriate community action be undertaken to ensure compliance with the law.

13. States assure that Title I programs actually meet the educational needs of all poor children and recognize the cultural heritage of racial and ethnic groups.

The goal of Title I is simple. It is to help children of poor families get a better education. Accomplishing that goal, however, is not simple. Existing educational structures at the State and local levels are the institutions responsible for the administration of Title I, but often they are the institutions least able to respond to a new challenge or to respond to the needs of poor minorities. In order to accomplish the goal of Title I, many changes will be needed. But before we can understand the nature of the changes, we need to understand what the law provides and how in fact it is operating in school districts across the country. That is the substance of this report.

Why this review of title I

Reviews and evaluations of Federal grant-in-aid programs are usually made by "experts". This review was not prepared by educational "experts", but by organizations interested in the rights of the poor. We make this review because we feel that the accepted experts have failed to inform honestly the public about the faulty and sometimes fraudulent way in which Title I of the Elementary and Secondary Education Act of 1965 is operating in many sections of the country.

Mr. PELL. Mr. President, these findings are most upsetting for it indicates that our Nation's children are suffering due to bureaucratic ineptitude and disinterestedness. However, it is enlightening when we remember that in the past year we have seen these same types of agencies attacking the title I concept; saying that compensatory education does not work. Perhaps this report picks up the thrown gauntlet. It says quite bluntly that title I has not worked because the Federal, State, and local agencies responsible for implementing it have not carried out the task as they should have.

In our hearings on the extension of the ESEA some of the findings in the report were initially alleged. After investigation of these charges and study of the Office of Education audit reports it was found that these allegations generally had a basis in fact. The bill ordered reported to the full Committee on Labor and Public Welfare by the Subcommittee on Education contains language which attempts to deal with this misuse of title I funds.

With the foregoing in mind, it was reported in the press that James E. Allen, Commissioner of Education, expressed dismay about the report and said that his agency is studying the problem, will appoint a task force, and within 8 months will take some action. I would have hoped for a more affirmative reaction—one which said, "Yes, there is a problem, one with which we shall deal."

I believe that the Office of Education already has the authority to safeguard against the misuse of Government funds. I understand that neither the Office of Education nor the States have ever exercised their full administrative responsibility under title I. I urge the Office of Education to take action. I also trust the Office of Education would endorse the procedures in the Senate elementary and secondary education bill which would further guard against the reoccurrence of this happening. Another study is not what we need. We need leadership and action.

PRAISE FOR THE CAPITOL POLICE

Mr. GOLDWATER. Mr. President, it is my purpose to say a few words in tribute to the outstanding display of professionalism demonstrated by the Capitol Police Force during the events of the last weekend. Chief James Powell and all the officers on the Capitol Police Force deserve a well earned pat on the back for the fine job they did in dealing with the large crowds that came to the Capitol Grounds during the recent massive demonstration.

Sometimes it is possible to overlook a truly good service performed by public servants when they have handled a difficult job so smoothly and calmly as these men did, and I want to make certain that the officers on the force know that they have won the gratitude of all Members for the excellent way they performed their duties on the occasion of the recent demonstrations.

In my opinion, the Capitol Police Force does its work in a polite, competent way all year long. This was a particularly challenging time, however, and I believe the men came through with flying colors without one incident of trouble. Congratulations, Chief Powell!

ALLEGED WHOLESALE SLAUGHTERS OF VIETNAMESE VILLAGERS

Mr. McGOVERN. Mr. President, for the past several days the press has been carrying incredible reports about alleged wholesale slaughters of Vietnamese villagers by U.S. forces in Vietnam.

Yesterday's Washington Post quotes two Vietnam veterans, Sgt. Michael Bernhardt and Michael Terry, now a college student in Utah, to the effect that most of the 60 to 70 men in the combat unit in which they served participated in shooting down peasants in a Vietnamese village on March 16, 1968. Estimates of the number killed range from 91 to 567.

The report speaks of 20 to 30 villagers, mostly women and children, being machinegunned in a ditch.

It tells of huts being set on fire and the people being shot as they came out.

There is a description of people being gathered in groups and shot, and of a grenade launcher being fired into such group.

Only three weapons were found in the entire area; there was no resistance.

One member of the U.S. forces shot himself in the foot so that he would not have to participate.

On the day before, the report says, a popular member of the company was blown apart by a booby-trapped shell.

The incident is under investigation.

Mr. President, no one wants to believe this report. But what if it is true?

Surely it weakens the arguments of those who fear a bloodbath in the event of our withdrawal from Vietnam. No bloodbath among the Vietnamese themselves could possibly compare with the death and suffering which has already occurred and which continues because the war continues.

The most shocking incidents gain our attention. Earlier it was the destruction of a city of 35,000 people "in order to save it." Now it is innocent Vietnamese being gunned down.

But thousands more have been killed and maimed a few at a time, many by accident, caught by our bombs or between contesting forces. The civilian death rate was estimated at between 150,000 and 200,000 annually, even before the 1968 Tet offensive. And there are steps short of death. Four million South Vietnamese—or one third of the rural population of this rural country—have had to flee their homes and become refugees. Those who have returned to their villages after incarceration in tent cities have probably found their animals dead, their fields mined, and their dwellings destroyed.

Is this how the "hearts and minds" of the Vietnamese are won? Our share of this is what we contribute on behalf of a government whose anticommunism is its sole claim to our allegiance and which has no claim to the allegiance of its own people. This is the fate of the unwitting pawns in our messianic crusade against communism. We can only wonder how far down on their scale of priorities, if it can be found there at all, is their interest in being governed by our preferences in despots instead of those of someone else.

Yet many still wonder why we have not succeeded. Many still puzzle over the failure of these embattled people to rally to our cause. Many still wait for the miracle which will transform South Vietnam into a unified and dedicated bastion of freedom in Asia.

That miracle will never come.

If the report is true we should wonder as well what causes several score of American men to go berserk almost as a unit. If it had been only one a number of

explanations could be found. All wars have such effects on a few. But not on 60 or 70 having varying backgrounds and beliefs. Surely even the death of a comrade does not transform so many carefully trained soldiers into maddened, indiscriminate killers.

I suggest that the cause is the futility and the uselessness of this war. I suggest that we can expect outrageous actions from young men who are asked to kill and be killed, and to see close friendships born of adversity destroyed by slaughter and mutilation, for no convincing reason and with no discernible end in sight.

Mr. President, I pray that the Nixon administration will stop our participation in the horrible destruction of this tiny country and its people. I pray, too, that it will halt the tragic waste of the lives, of the bodies, and—as the incident of last March illustrates all too well—of the minds of young Americans.

ECONOMIC VIABILITY OF HIGH-SPEED TRAINS

Mr. PELL. Mr. President, a report published recently in the Providence Sunday Journal Business Weekly supports a proposition that I have been putting forth for many years; that is, high-speed trains are economically viable. The experience which the Japanese have had with their high-speed trains is very much parallel to the experience that Penn Central has had with its Metroliner. While overall passenger service has been losing money, high-speed passenger service has been making money.

I believe that the Japanese experience provides an even greater justification for the United States to move ahead more forcefully with a greater allocation of Government resources to its own high-speed ground transportation program. I ask unanimous consent that the article published in the Providence Journal be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

JAPAN'S SUPER-FAST TRAINS PAY OFF; REST OF SYSTEM IN RED

TOKYO.—Japan's super-express bullet trains are making money in a hurry, but their owners are spending it faster.

In the five years since the 125-mile-per-hour electric trains made their debut in time for the 1964 Tokyo Olympics, the line has grossed nearly $1.39 billion on an initial investment of $1.06 billion.

Net profit for the period was $305.6 million, a remarkable feat considering that the bullet trains operated at a loss of $57 million for the first two years—and that the rest of Japan's nationally-owned railways are still losing money.

Terminals of the 320-mile bullet line are in Tokyo and Osaka, host city for the 1970 World Exposition.

Since the first trainload of passengers sped from Tokyo to Osaka in three hours and 20 minutes, nearly 250 million persons have taken the ride across a countryside dotted with rice paddies, tea farms and lakes.

During its first year of operation the line carried 60,000 passengers daily. In the first half of 1969, with round-trip runs tripled from the initial 30, the air-conditioned coaches carried 200,000 persons daily.

The line—Japanese call it Shinkansen—literally "new trunk line"—is operated by the Japan National Railways, a public utility branch of the national government. JNR operates 244 other lines throughout the country, 234 of which are losing money.

Officials said JNR's overall operation was $372.2 million in the red on March 31, which ended the 1968 fiscal year, and was incurring a daily deficit of $1.9 million. A government subsidy of $141.1 million in fiscal 1969 is expected to ease the burden.

The bullets currently carry 12 coaches in one run, but officials are planning a 16-car service in 1970 when the World Exposition, EXPO 70, opens March 15 for six months.

The lead and rear coaches house the engineer's compartment. They are shaped like airplane fuselages to reduce air resistance. Controls at both ends eliminate the necessity of a turn-around at terminal points. After reaching Osaka, the engineer walks to the rear car, the movable seats are switched to face the opposite direction and the train is ready for the return trip.

CONTROVERSIAL MOVIES

Mr. McCLELLAN. Mr. President, on September 22, I addressed the Senate concerning current trends in the motion picture industry and the possibility that films which have been classified as not suitable for viewing by a general audience may be performed on television. Reports of my speech appeared in a number of newspapers throughout the country and as a result, I have received several hundred communications from the public. All but two of those who wrote me endorsed the objectives of my remarks. Many strongly urged me to pursue this subject. Some also requested my advice as to what they could do in their own communities to be of assistance in the battle against moral pollution. When we are told that much of the entertainment media is saturated with depravity because that is what the public desires, it is encouraging, but not surprising, to receive this tangible indication that there continues to be substantial support for our traditional moral standards and values.

I do not wish to burden the RECORD with too many insertions, but I do desire to share with Senators some excerpts from a representative sampling of the mail which I have received.

A woman in Texas who said she is in her late 20's "and would definitely be considered a swinger" wrote:

This is the first time I have ever written a letter on anything other than personal business. However, it was so gratifying to find someone in Congress who recognizes the danger to our country that movies and television now pose. The movies which worry me the most are those that are insidious. It is the anti-hero ones that present alcoholics, thieves, killers and dishonorable people as the hero that is so likable that it is hard to dislike them for the wrong things they do. If a person deliberately set out to weaken our country, the best place to start would be movies and t.v. They are the means of education that reaches every person in the U.S.

From a mother in California:

I want to thank you for being farsighted enough to begin now to take the necessary steps to protect American homes from the rash of indecent films currently polluting our movie screens and the minds of many who go there.

A woman in Uniontown, Pa.:

As the mother of seven children, I heartily agree with your feelings on this subject. There are some movies on t.v. that don't belong there now!

A mother in Tulsa, Okla.:

I want to express my sincere thanks to you for your stand on the moral issues and things such as sex and violence on the screen and television; also, the showing of casual infidelity, couples living together, outside of marriage, as if it were the accepted thing to do. Senator McClellan, please do all you can toward ridding our theaters and homes of filth.

A mother in Decatur, Ga., with three children:

Thank goodness for a few leaders in our country who will speak out and fight against moral decay that seems to be overtaking our country!

A mother in Louisville, Ky.:

Thanks, thanks, thanks from a grateful public for being brave enough to speak up so forcibly for all of us long-suffering people. We heartily agree with your sentiments regarding the *filthy disgusting* movies being *pushed* down our throats wherever we turn.

A woman in Springfield, Mass.:

Wholeheartedly, I agree with your statement that the insidious influences are even more damaging to our young peoples' sense of morality than is blatant sex or violence.

Please count me among your backers, and allow me to express my thanks to you for your efforts on behalf of decency. Let's give our young people something more idealistic to reach for than that which is to be found only in the gutter!

A woman in upstate New York:

It is good to know there are those men like yourself in our government, who are fighting the deluge of filth guised as entertainment which has engulfed our country in the past few years.

A young man from Arkansas now attending college in Oklahoma:

Knowing that we have a great man representing the state in the Senate, I have decided to contact you concerning a matter that bothers me. I am familiar with your moral beliefs, and I certainly appreciate your stands on such action in the past. I only ask that you serve the future of this country by proposing strong legislation against the movie industry in order that the decency of the people of the United States might be preserved. I know legislation such as this would take much courage on your part, but I ask that you initiate such action to preserve our nation.

A gentleman in Ann Arbor, Mich., sent me a well-reasoned letter in which he observed:

It is not too often I can find something to agree with you on, but your statement resonates very strongly with my observations of the campus scene in the past few years. I have been a long-standing opponent of censorship. For many years I was a member of the New Jersey Council for the Right to Read which fought censorship efforts in that state. I am concerned about the influence on young people of the continual barrage of anti-establishment films, however, and I welcome any efforts you make to look into this problem. Whatever happened to the benevolent Irish cop or the wise and compassionate parent we used to catch a glimpse of occasionally?

A California businessman:

Although I am not your constituent, I am particularly pleased to see that Congress is finally asking questions about the quality of movies being shown on television. Investigation of the contracts associated with all movie films, regardless of how salacious their

content, will reveal that in each case, revenue is anticipated from television release. Having spent seventeen years in the picture business, I certainly do not consider myself a prude in any sense of the word, but I do sincerely feel that films of the type presently being made have no place in the home. Young children and teenagers, in my opinion, are not capable of coping with the explicit sexual portrayals that are presently exhibited in our theaters.

I am sure that most parents in the United States feel as I do, but the so-called sophisticated and sometimes moronic "intellectual new left" seem to make themselves heard much more effectively than we can. Thanks to you and John O. Pastore, perhaps these matters will get their proper attention in due time.

A mother of four in New Jersey:

I read your recent article in our Asbury Park Press about pollution on t.v. and movies. We are concerned parents here in Lakewood, New Jersey. Despite our objections about the movies being shown in our home town, they are allowed to run. We have started "The Association for Decency in Motion Pictures", an interfaith organization founded by the Altar-Rosary Society of St. Mary of the Lake Roman Catholic Church in Lakewood, New Jersey.

A businessman in South Bend, Ind., expressed a note of pessimism:

Your speech was well organized and the facts impressive. But, the suggestion in the next to last paragraph that we ". . . protest against the possibility of the airwaves being polluted" raises two points—(1) As the father of eleven children, I find a stench already present in those airwaves. (2) As one who has spoken to a number of local social, civic, and fraternal groups about the trends in the communication media, it's apparent to me that 90-plus percent of the people do not *want* this rot, but are completely overwhelmed by the freedom-of-expression, liberal-intellectual group that unintentionally fronts for the money-hungry exploiters of sex and violence. As a result, no effective protests are ever mounted. From this vantage point, your concern is well taken, but I fear, friend, that it has come too late.

Finally, Mr. President, I have received several letters from citizens of Canada. For example, a mother in Ottawa:

I read in the Toronto Globe and Mail (Canada) today about your proposed intention to do your best to stem the tide of corruption via television to the minds of children and young adults. In the article you were quoted as asking the parents to get behind this movement and support your efforts.

We parents in Canada may not have any influence in your country to voice opposition to the present lack of anything ennobling in current movies, magazines, etc. but nonetheless we across the border are just as concerned as our American counterparts.

Your fight to inculcate better spiritual and moral values in young Americans (and young Canadians) will be a lengthy and hazardous one because you will be opposing, not only a globally sick society, but all the vested interests who feel that you will be attacking their most sacred "cow", dollars and profits. But don't be discouraged and I know you won't be intimidated. There are thousands, no millions of concerned parents and educators and social workers all over this continent and no doubt other parts of the world who are prepared to work right along with you in any way they can to resist the spread of this malaise.

I have been informed that various religious and parent-teacher organizations have adopted resolutions pledging their support to my efforts. For example, I have received a communication from the Parent Teacher Guild of St. Joseph's Grammar School in Alameda, Calif., declaring:

We, as a group, wholeheartedly support your position. We would like very much to have a copy of your speech to the Senate in regard to this situation so it could be read to our members. Also, is there anything that we can do as a group, to help support you and your position?

I have sent a questionnaire to the networks and every commercial television station inquiring as to their policy with respect to the showing on television of movies which have been classified by the Motion Picture Association of America as not appropriate for general audiences. A number of broadcasters have assured me that they share my concern and that they will act to prevent the performance of objectionable movies on television. It is highly desirable that the broadcasting industry regulate itself rather than allow inaction to culminate in a growing public demand for more government regulation. Mr. Lawrence H. Rogers II, the president of the Taft Broadcasting Co., effectively summarized the preferred course of action when he said in a letter to me:

For many years I have espoused the cause of a much stronger application of self-regulation on the part of the Television Code. I believe many of the real or imagined woes of the nation's television licensees can be attributed to our own unwillingness to apply stringent enough standards to program acceptability and commercial content. To turn over the machinery of self-regulation to some government body which will forever be our arbiters of national taste and conscience would, in my mind, be a calamity. When you consider the power of television, it could sound the death knell of a free society.

Representative of the responses I have received from broadcasters is this observation from Mr. William J. Edwards, president of the Lake Huron Broadcasting Corp., Saginaw, Mich.:

As my answers to your questionnaire indicate, I flatly oppose the introduction of such programming to television and I regret very much to see the moral levels of the theatre reduced to such an extent. I commend you for your interest and the manner in which you have spoken out on this subject. Let me hasten to add that I trust your efforts will awaken the public to the growing exploitation of such entertainment and the resultant disintegration of moral values and spiritual traditions.

Mr. F. S. Houwink, vice president-general manager, the Evening Star Broadcasting Co., Washington, D.C.:

From what we have seen of the movies now being released, we feel that many are completely unacceptable for television viewing at any time.

Mr. David W. Wagenvoord, president, WWOM–TV, New Orleans, La.:

This is a very difficult problem. I am glad to see that you and your committee have embarked upon it. It must be solved, since these films are coming to the forefront, and obviously the motion picture business will be interested in selling them to television. If the National Association of Broadcasters will take the leadership in this, then they could pass the necessary rule-making to "control" and keep the films which are unfit for young people off of television without additional legislation. At least I would hope it could be done this way, since I feel there is more adequate legislation now concerning television programming. Unless someone can come up with a method of keeping the youngsters from viewing these, I don't see how they can ever be shown on the television medium. I think you are headed in the right direction.

Mr. R. D. Williams, vice president-general manager, KGGM television, Albuquerque, N. Mex.:

It is totally inconsistent with this station's policy to run anything on the air that is not in the public interest for all walks of life and all types of families. In our estimation, many of the movies running in the theatres today are so far from the public interest that it is totally unbelievable to us that anybody could be party to sending this type product into people's homes.

Mr. Aben E. Johnson, general manager, WXON–TV, Detroit, Mich.:

It is the writer's belief that should it be possible to preclude degrading films from use by the television industry that this potentially lost revenue would have a reverse effect and would encourage movie producers to make films that would qualify under a proposed code.

While these statements by broadcasting executives have been encouraging, there have been other developments which raise certain questions. On the very day of my Senate speech, the Los Angeles Times carried an account of a speech by Michael H. Dann, CBS–TV senior vice president for programs. He said television is going to focus "on delivering entertainment for a more sophisticated audience." Mr. Dann was quoted as having said:

Television is becoming more permissive all the time.

The front page of the October 29 issue of Variety reported that the CBS television network had recently made an offer to secure television rights to the controversial 1956 film, "Baby Doll" but that the efforts of the network to purchase this film were not successful because of disagreement over the right of the network to makes cuts in the film. At the time of the release of this film, the Legion of Decency, the leading independent evaluator of movies, said:

The subject matter of this film is morally repellent both in theme and treatment. It dwells almost without variation or relief upon carnal suggestiveness in action, dialog and costuming. Its unmitigated emphasis on lust and the various scenes of cruelty are degrading and corruptive. As such, it is grievously offensive to Christian and traditional standards of morality and decency.

In evaluating the possibility of objectionable movies being performed on television, it is useful to quote another paragraph from the Variety article:

Eye-popping aspect of the news, of course, is the apparent willingness of the nets to gamble on the televisibility of such fare three or four years hence—a risk taken during an era when the webs have been defending themselves against Washington politicians in the area of alleged "dirty" movies on video. This would confirm recent gossip that web nabobs think the "sex — & — violence thing" a passing phenom and that the heat will be off in a few years.

The Reverend Patrick J. Sullivan, S.J., director of the National Catholic Office for Motion Pictures, has written me:

Quite obviously your comments on this subject have shaken the television industry. They should also lead film producers to examine their future but I candidly wonder whether most of them will be concerned to do so. It is my experience that film producers are fully confident that they will eventually obtain a television sale of their films (however "adult" they may be) either because they expect the movie industry's current permissiveness to spread to television or because they will agree to allow television people to cut their films in order to make the films acceptable for telecasting.

Your speech stands in the way of any change to permissiveness in television practices. I trust that it may also influence film producers to realize that many of today's films can hardly be made acceptable for telecasting by even radical reediting. In expressing this hope, however, I must also recognize that the future effect of pay television on the moral and social quality of film production is yet to be evaluated.

I have also noted that Dr. Max Rafferty, the California superintendent of public education, has commented in a recent article on trends in the movie industry. He wrote:

Then there are the movie-makers. There are some healthy exceptions to the rule. The Disney people, for example. Yet the premise is universal enough to stand:

'The movie-makers are systematically seducing your children to make a fast buck."

Want to watch sodomy glamorized? You can see it in the movies.

Like to have adultery portrayed as normal and desirable? You can see it in the movies.

Think lesbianism should be shown sympathetically? You can see it in the movies.

So can your children. And you'd better believe it. I accuse the movie moguls of soullessly and cynically pandering to the basest instincts of the human race.

And I accuse the movie actors and actresses who starred in these ill-started putrescenes of debauching the great and ancient art of acting.

While the considered opinions of theologians and educators deserve our careful attention, perhaps of even greater value are the candid observations of artists who have expressed their revulsion at conditions in much of the film industry. The November 18 issue of Look magazine contains a feature article about the actress, Debbie Reynolds. She is quoted as stating:

Most of the motion-picture scripts I've read have been either so sick it was difficult for me to comprehend them, or just plain trash. I had worked many years to be good at my craft, and I didn't want to be in pictures I'd be ashamed to see myself in. I was raised in the motion-picture business, and I love it.

The November 11 column of Sheilah Graham contains an interview of producer Irving Allen in which it is reported that Mr. Allen will be making a western movie in Arkansas next year. Mr. Allen discussed current conditions in the film industry. He said:

It is a terrible thing and is compounded by the distributors.

They say we shouldn't show this kind of pornographic film, but they fight to show them.

I was against censorship, now I want the government to step in.

Recently, I saw "Women in Love." I was shocked. Two men wrestling naked on the screen.

I remember when I was a film cutter and a kiss couldn't run for more than a few seconds. And cleavage had to be cut. That's a laugh today.

The film industry defends the current orgy of permissiveness on the grounds that because of the film classification system, objectionable films will be available only to restricted audiences. I have, therefore, sent a questionnaire to the leading film producers, requesting a statement of their policy as to whether or not they would offer for sale to television a film which by a voluntary classification of the Motion Picture Association has been rated as not suitable for a general audience. I have yet to receive assurance from any major film company that it will not seek to sell "R" or "X" films to television.

It is contended by the Motion Picture Association that the classification system is effective and is functioning properly. Yet the Washington Daily News on October 28 contained a front-page special report which carried the caption, "Teens ticketed for X-movies." The article reported the successful efforts of a 14-year-old girl to purchase tickets to several downtown Washington theaters performing an "X" movie. The author of this special report, Ann McFeatters, concluded:

Young people obviously can get into X movies, supposedly banned to them.

The Associated Press on November 10 carried a dispatch which began:

The film industry's self-imposed rating system has resulted in a rash of pornographic movies, says the president of the 75-theater Walter Reade Organization.

The article describes the views of motion picture exhibitor Walter Reade, Jr., who is an opponent of the classification system. He is quoted as saying:

We all know how few youngsters get turned away from X. pictures. We all know how many times the X has been used to add to, rather than to restrict the potential audience.

I have received many letters from parents who have voiced concern at their inability to find movies which could be patronized by the entire family. The Washington Star of November 10 contained a column on this subject by Philip H. Love. I will not insert the entire article in the RECORD because the message is effectively summed up in the caption, "Have You Tried To Find a Decent Movie Lately?"

Gilbert Youth Research's National Gilbert Youth Poll recently questioned high school, college, and out-of-school youth concerning the film classification system. Eighty percent of those questioned expressed the view that the film classification system increased curiosity to see a restricted movie. An article accompanying the results of the poll quotes this observation of the classification system by a college junior from Boston:

It's just a cover-up to allow filthy movies in first-run theaters. The movie industry, rather than censoring itself, which is the reason the code was set up, is really saying that anything goes as long as it carries a rating.

One issue that is discussed in a number of the letters which I have received from broadcasters is the possibility of making cuts in objectionable movies to make them appropriate for a general audience. I shall await the statements of the film producers before commenting in detail on this matter, but I do wish to make a few observations today. It is clear that when the subject matter of the film is the basis for a restricted classification, cuts—no matter how extensive—would not alter the status of the film. The more difficult question is when the restricted classification is based on a few incidents in the film, which may occupy only a very short percentage of the total time of the film. It is contended by some that these objectionable sequences could be eliminated and that the film could then be sold to television and viewed by the general public. This raises the question as to why these objectional sequences were included initially in the film. If their elimination does not destroy the artistic value of the film, why were they originally included? We are told by the film producers that these objectionable sequences are necessary in the context of the entire film. If that is so, then it would seem that to show a film on television stripped of an essential element would be a fraud on the public. It appears the inclusion or excision of these sequences is motivated principally by commercial considerations, with artistic values quickly abandoned, when expedient. Certain film producers include provocative sequences in movies to promote controversy and not infrequently to conceal a poverty of artistic ability. Then hoping to further add to their profits, they are prepared to delete such sequences in order to secure additional revenues from the lucrative television market.

Much has been written by individuals who are generally described as "liberal" and advocates of free speech as to the pernicious impact of television violence on our public life and youth. But many of these same people maintain that there is no need to be concerned about the debilitating effect of the movies which I have been discussing because there is no scientific evidence that such viewing influences those who are exposed to them. I find it very difficult to follow this sophisticated reasoning.

I shall speak again on this subject next month. I trust that I shall by then have received the responses from the major film producers as to whether they intend to offer restricted movies for sale to television.

SHE GRADUATES AT 109

Mr. DOLE. Mr. President, I wish to take this moment to commend a remarkable Kansas senior citizen, Mrs. Kittie Mary Harvey—"Aunt Kittie"—of Minneapolis, Kans. On Friday, November 21, Aunt Kittie graduated from Western College for Women at the age of 109.

Aunt Kittie's life is admirable and is well told in Forrest Hintz article which was published in the Wichita Eagle and Beacon of November 16. The article records Aunt Kittie's own account of life

as a frontier woman. Her memoirs beautifully reveal the pleasures and struggles women confronted during the building of our Nation. Though Aunt Kittie thought her life "ordinary," it is now unique. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COLLEGE HONORS AUNT KITTY, 109

Aunt Kitty will graduate Friday—91 years after she left Western Female Seminary in Oxford, Ohio.

"I never expected a thing like this to happen," said Aunt Kitty, now nearing her 110th birthday. "It's the greatest honor I could ever have."

On Sept. 14, The Wichita Eagle carried a story on this remarkable woman. A copy was sent to Dr. William Spencer, president of the school that now is called Western College for Women.

As a result, Dr. Spencer began a search of the old school records. He discovered that in the spring of 1878, her junior year, Kitty Mary Bonham had left the school because of ill health.

"We were dumbfounded," Dr. Spencer said. "I have never heard of a thing like this happening anywhere, but Aunt Kitty is proof that it can.

"The story—especially her memories of the school—was read to all the students (approximately 500 girls) and the board of trustees authorized the issuance of a diploma.

"It is little enough to do for a former student who has played an active part in the building of this nation, and we like to think at least some measure of it is due to our school.

"Naturally, Aunt Kitty won't have to come back here to complete her studies. I rather think there are things she could teach us."

The President and Trustees of Western College for Women request the honor of your presence at a ceremony to confer the degree of Bachelor of Arts, *honoris causa* upon Kittie Bonham Harvey, Class of 1879, Friday, November twenty-first, nineteen hundred and sixty-nine, at eleven o'clock at the residence of Mr. and Mrs. Bernard Clanton, 520 East Second Street, Minneapolis, Kansas.

FRONTIER DRAMA MOLDS HEROINE IN AUNT KITTY

(By Forrest Hintz)

MINNEAPOLIS, KANSAS.—It was a time of upheaval, of unprecedented change, and nothing ever again would be the same.

Men had taken a raw wilderness, heated it in the crucible of war and begun the task of hammering it into a nation.

Historians call it a time of "Empire Building" and extol the "virtues of the men who tamed the "Great American Desert," but they say little about the women who accompanied those men.

Mrs. Kitty Mary Harvey—"Aunt Kitty"—is one of those women. She has been a participant rather than a spectator during 109 of the most turbulent years of American history.

Thirteen years ago, when she was a mere 96, Aunt Kitty wrote her memoirs in a clear, flowing longhand. Although she doubted that anyone would be interested in what she had to say, she wrote a fascinating account of life as it was—from the time man drove an ox-cart until he set his sights on the moon.

Written in simple, straightforward language, the narrative is devoid of heroics because Aunt Kitty has never believed her life was anything out of the ordinary. But the elements of high drama—action, comedy and tragedy—all are there, bound together with a strong thread of humor.

"I was born Jan. 12, 1860, in Elizabethtown, Ohio, a very small village," she wrote. "I remember a few incidents of the Civil War.

"A regiment of Union soldiers passing through the town was given a big dinner by the townspeople. As my Grandmother Bonham, who lived just across the street from my home, had a large kitchen and dining room, the dinner was given there. Of course, I was hovering around in everyone's way, I suppose.

"I remember how afraid I was of the men as I thought they killed folks. As I stood in the doorway, peering into the dining room, a tall man with a cap on and a knapsack on his shoulders saw me. He picked me up in his arms and wanted me to give him a kiss for his little girl. He said he had a little girl at home just as big as I.

"I don't think I shall ever forget my feeling of fear, feeling I might be killed the next minute, but I gave him the kiss. I have often wondered if he got home to his little girl."

Aunt Kitty's father died when she was about 1. Five years later, her mother married Rev. Horace Bushnell, always referred to with great affection as "father."

In 1867, the family moved to Southport, Ind., six miles south of Indianapolis. There, Aunt Kitty became fast friends with Lida Howland—a friendship that lasted nearly 90 years.

"We young folks went to the Howland home more often than anywhere else," she wrote. "Their parents never seemed to mind how much noise we made, and some of the most happy days of my life were spent there.

"We had to make our own amusements—no movies or shows—but we had lots of fun; it seems to me more than the young folks of today.

"In the winter, the boys would put a big wagon bed on runners with straw and blankets on the floor. We would all pile in and away we would go, often ending the evening at the Howland's.

"It was there I learned to dance, but only the schottisch, waltz and polka. One of us played the piano while the others danced. We, of course, belonging to the preacher's family, were not supposed to dance, but we did no harm."

Work and the simple pleasures were the hallmark of that bygone day. This is how Aunt Kitty wrote it:

"My dresses were all made over. (My first new dress) was a plaid in reds, trimmed with a frill around the neck and sleeves of red satin ribbon gathered in the middle. I first wore it to a festival. We would now call it a 'social.' I felt there wasn't a dress equal to it at that gathering.

"After a time, the church built a manse on a large lot with no improvements. Father soon had a beautiful place; red and black raspberries, a large grape arbor, quince, apple, peach and plum trees and many flowers.

"We had a large asparagus bed, early onions, rhubarb, etc. Father told me if I would take rhubarb and onions to the store I could have the money. I made enough to buy a croquet set, a white dress and blue sash.

"We had no lawnmower, but the boys, with sickles and even scissors, kept the large grounds looking like moss.

"When I was about 4, someone gave me a gold dollar. I suppose I said 'thank you' properly, but thought it was so much smaller than a penny it would not even buy a stick of candy.

"Candy was not as plentiful in those days. A stick of candy was a great treat. We made molasses taffy and had maple sugar. We used to have taffy pulls and had lots of fun. You could buy little cakes of maple sugar.

"Once, when father was planting a maple tree, my sister, Carrie, asked 'And will it have little maple sugars on it.' "

Medicine was different then, and doctors still made house calls.

"Much of a doctor's traveling in those days was by horseback." Aunt Kitty wrote, "He would come in, lay his saddlebags over his lap and mix huge black pills and powders. No sugar-coated tablets then. He would say 'That won't taste bad. I put cinnamon in it.' It was years before I could eat anything with cinnamon in it.

"Nothing about his office was sanitary. My boyfriend hurt his finger and the tip had to be cut off. He said the doctor picked up a shingle in the yard, had the boy lay his finger on it, took a penknife out of his pocket and cut off the end of his finger. Can you imagine a doctor of today doing such a thing? And he was considered a good doctor."

In 1876, Aunt Kitty enrolled in "Western Female Seminary," now Western College for Women, at Oxford, Ohio, to study music. She remembers the fun there, for she wrote:

"One of my teachers, a Miss Jessup, was crippled and went in a wheel chair and two of the girls had to take her meals to her.

"Miss Peabody, the president, always asked a blessing at the table and always ended it with 'and may we all meet on Mount Zion.'

"One day, the door between the kitchen and dining room was not quite closed as the two girls were getting Miss Jessup's tray ready. Just as Miss Peabody said, 'May we all meet on Mount Zion,' one of the girls, not noticing the open door, called to the other, 'You go right on and I'll bring the teapot.' There was a roar from the 200 girls.

"There was a boys' university between our school and Oxford. The university boys were a big trial to Miss Peabody.

"There was a hedge across the front of our grounds and the boys would come and visit or pass notes across it, so the rule was changed and the girls could only go as far as a certain row of trees quite a way back from the hedge.

"The boys used to come over at night and the girls would let down strings to which the boys would tie boxes of candy. Once, they sent up a can of brandied peaches and one girl got hilariously drunk."

Even then, college girls were political activists, although women would not be allowed to vote for another 44 years.

"In 1876 or thereabouts there was a presidential election," the narrative continues. "It was very close. The Republican candidate was Hayes, but I have forgotten the name of the Democrat running. (He was Samuel J. Tilden.) It so happened that there were very few Democrats among the girls.

"The first report in the morning was that Hayes was defeated, so we draped the front of the building, three stories, in black. We stuck broomsticks, yardsticks, etc., out of the windows and twisted anything black—scarves and even clothes from one window to another. People rode out in wagonloads and rigs from Oxford to see it and it caused much amusement.

"But before night the report was changed and we drew in the black and went down to supper all decked out with rosettes and streamers of gay tissue paper.

In failing health, Aunt Kitty left the school in the spring of 1878 and came to Minneapolis, where her family had moved.

"At that time there was no railroad to Minneapolis," she wrote. "Father met me at Solomon and we drove from there.

"Early in July, the railroad from Solomon reached Minneapolis. There was a big celebration and a picnic held in Markley's grove, with trains from Salina. That branch of the Union Pacific was then built on to Beloit."

Aunt Kitty met Will Harvey in Minneapolis. A promising young attorney, he was only 12 years her senior, yet he had served as a surgeons' aide in the Civil war. They were married May 6, 1879.

It was about that time that Aunt Kitty went to visit an aunt by marriage, Mrs. Lucy Bonham, who had just settled on a homestead near Miltonvale with her young son, Arthur.

This is how the memoirs describe what happened next:

"She brought with her three good horses, 100 sheep and afterward bought a cow, calf, pigs and chickens.

"One day, we saw smoke from a prairie fire. They had a wide space plowed around the house and barn. The fire was creeping along slowly, no wind. I was scared and, much to Arthur's disgust, insisted on his burning some grass between the plowed ground and the house—and that was all that saved the house.

"Very suddenly, like a flash, the wind turned and the fire came on in great rolls. Aunt Lucy and Arthur ran to get the animals out of the barn. They got the two horses out, and I held them up by the house, but the other refused to come out.

"Aunt Lucy had finally to climb out over the backs of the sheep when the barn roof caught fire. All they saved were the two horses.

"It was all done in a minute, and for that minute there was a wall of fire higher than the house on every side of us. In the morning, all we could see in any direction was black."

The Harveys had two children. Fred, born in 1881, became a doctor and died in 1961. A daughter, born in 1883, died in infancy. Several years later, the Harveys moved to Oklahoma Territory.

"Will's brother, Dave, had homesteaded a farm adjoining Oklahoma City," Aunt Kitty wrote. "He was elected senator and had to go to Washington and did not want to leave his home empty, so we decided to make the move and live in his house.

"It was all very new and wild at that time. Our horse got stalled on the main street in the mud.

"There was much contention over the farm next to the one we were on. I think there were 10 contestants killed before it was settled, so things were not dull.

"It was rumored that the farm next to ours belonged to Oklahoma City and we got up one morning and found the place covered with tents and little board shacks; anything to hold down a lot. One old woman had a big wooden box laid on its side and she sat in it, rocking serenely in a rocking chair. But they all had to get off as it did not belong to the city."

Frontier women accepted hard work and natural disaster with equanimity, as this entry shows:

"We had a wonderful garden that first year. Every kind of vegetables, three kinds of cucumbers, three kinds of tomatoes so large they would hardly go into a can. I canned and made preserves and all kinds of pickles of the green ones.

"One afternoon we had a wind and hail storm—huge, jagged hail stones, windows broken and no garden left. Melons and all the rest were pounded into the ground.

"Fred shoveled up a tubful of hail stones and we made ice cream.

"I was glad I had done all my canning early. Just before leaving Minneapolis I had canned 75 quarts of cherries. I picked some, pitted them all by hand, and so had quite a start over the 300 or more quarts I always canned."

Some Indian lands were opened at Chandler, about 50 miles east of Okalhoma City, and Will went there to build a house. Aunt Kitty's health failed again and she went to Concordia, where her parents were living. She was unable to return to Oklahoma for 10 months.

"Everything there was very new and rough," she wrote. "They persuaded Will to take the post office for a time, although he was an attorney. I don't remember just how long he kept it. While the place was small, the mail was handled for a large territory. After a time, I helped some in the office, but there were always two clerks.

"When the Cherokee Strip was opened, practically all the men in Chandler went to it. We did quite a big money order business and at the end of the first day I had quite a sum of money on hand which could not be sent to Guthrie until the next day.

"The office just had a big safe. Bandits, of course, knew all the men were gone, so I felt the safe would not be very safe. I took the money home with me and sat up all night. The office was robbed soon after Will gave it up." Will gave up the office to become probate judge, a position he held until his death in 1900.

Law and order was slow in coming to the territory, and Aunt Kitty had an encounter with frontier badmen.

"One morning, Will went to his office and said if certain mail came he would have to go to another town and would not be back until the next day," the narrative continues.

"About 10 in the morning, Fred, who was playing in the yard, came running to the door and said the Dalton gang was coming through our alley. I thought it was just some deputy marshals, but stood in the door and watched as they came by, close to the walk.

"They were going slowly. I noticed that four had blue bands around their arms and one a red band. They were heavily armed.

"They turned at our corner and went south. The bank they were going to rob was just a block from our house, courthouse and jail between.

"Fred, like any boy, rushed down to see what was going on. The sheriff's house was catty-cornered from our home.

"When the firing began, I saw the sheriff's wife come to the door with two guns in her hands, and like a dumbbell, I started across the street to see what it was all about.

"Just then they came tearing back. One of their horses had been killed and two men were on one of the horses. They were all firing their guns in every direction. I was backed up against the house—a good target.

"The sheriff rushed across from the courthouse, grabbed a gun from his wife and a horse that was hitched by the courtyard and was after them. Others followed as soon as they could get horses and guns.

"Down at the bank, one robber went in front and the others to the back and began firing up and down the street. A barber who came to his shop door with a gun in his hand was shot and killed. That shop was next door to Will's office at that time, so I was worried enough until I found that he had left town earlier. I rounded up Fred.

"The sheriff got one of the men. When he got back with him there were at least 100 men in the courtyard with a rope ready to hang the man then and there. The sheriff fired over their heads before he could get his prisoner in jail. The mob said they would get him that night.

"My friends did not think it safe for me to stay there alone. Fred was just a young boy. But I was afraid of their starting a fire or something and would not leave. The sheriff's wife, a dear friend, said she would not sleep any, so I took Fred and went to be with her. Her husband stayed in the jail.

"The mob was gathering downtown. About 12, we heard two shots and we supposed it was a signal, but a deputy sheriff had a fracas with a man and shot and killed him. He was brought up and put in jail.

"The sheriff told the mob they had better stay away. He said 'There are two widows in town tonight and there will be more if you come. I have never given up a prisoner and don't intend to,' so they gave it up. About 2 o'clock he came over and told us the trouble was over, but he still stayed at the jail.

"It was the Cook gang, and I think they were all caught eventually.

"It was an exciting time."

More excitement was in store. A few weeks later, a tornado nearly destroyed the town.

"It came about 5 in the afternoon," Aunt Kitty wrote. "Court was in session and Will came home about 4 and said he had one of his sick headaches coming on and would lie down and have a cup of tea before going down to his office to make out some papers before the night session.

"First came the hail, then wind and then torrents of rain. Everything was black and terrible. Will and Fred tried to keep the door shut and I tried to rescue some things from the storeroom before they were soaked. I was thrown against something and had a big lump and bruise on my forehead, but did not realize it until later.

"Our house was moved about 15 feet into a neighbor's yard. Three rooms were unroofed—kitchen, bedroom and storeroom—leaving us with the living room and one bedroom. Our barn was blown away, but the ponies came home in about an hour, unhurt, with just a few inches of rope left on their halters. The woodhouse was blown away, but the wood was left stacked up just as it had been."

No one thought of giving up. Perhaps the following passage, more than any other, explains why the frontier was tamed:

"We had a lamp in a kind of frame and I could heat a little water for coffee and cook one egg at a time. That was the only stove we had for some time. As the grocery store was wrecked, we did not have much to eat until they brought things from Guthrie and Oklahoma City.

"A friend from the country came that first morning and brought some biscuits and hard-boiled eggs and another brought a small, boiled ham.

"We got along."

"At the time of the storm, they saw our walls were standing and began bringing in hurt people. An old man with a broken leg was on the couch. He died later. Among the ones laid on the floor was a little 9-year-old girl who kept crying for her mother. We found her father and mother were both killed. She died, leaving one little 5-year-old boy out of the family.

The townspeople buried their dead and rebuilt their homes, and once more, Aunt Kitty's magnificent humor bubbled.

"The colored folks had an Emancipation Day celebration one year," she wrote. "A man named Crenshaw was to be master of ceremonies, so Will and some of the others dressed him up for the occasion.

"Will had a blue coat he was discarding and I found some big, brass buttons for it. Somewhere, they found a plug hat. One young man let him wear his gold watch and chain, then a foot-wide red scarf over one shoulder and down almost to the ground. No king was ever any happier than he.

"I went downtown in the afternoon and was crossing the courtyard where a crowd had gathered. Crenshaw saw me coming and went before me, waving his arms and making way for me as if I were a queen. I had hard work to keep my face straight.

"The colored folks thought a lot of Will and would do anything for him."

But disaster had not yet finished with this indomitable woman. The blow fell in 1900.

"In June, Fred came home from college at Norman," she wrote. "In a few days, he came down with typhoid fever. He was very low for eight weeks—just as low as anyone could be and live. Nurses were impossible to get, so I had all the care of him.

"The last of August, when Fred was just able to stagger around, Will became sick with malaria fever. He did not want to get anyone to work in the office as it was almost time for court and he was afraid they would get things mixed up, so I also had the office on my hands.

"Will lived only two weeks and died Sept. 5, 1900. I felt very much alone."

Leaving her property in the hands of a real estate man named Hoover, Aunt Kitty and

Fred returned to Concordia, and it was then that Hoover made the biggest mistake of his life.

"I wanted to sell my home," her narrative says. "I told him to sell it for $1,200 and that I would not let it go for less than $1,000.

"He and his partner sent me a deed to sign for $1000, which he said was all they could get. But in the paper I read the Harvey house was sold to a man named Sennett. That was not the name on the deed I had signed. I went down there.

"I went to Sennett and asked if he had a deed. I held it up to the light and found they had scratched out the other man's name, written in 'Sennett' and added $200. Then I was ready for my real estate man.

"I brought suit and won, the people were so enraged that Hoover and his partner had to leave town."

Aunt Kitty was not the type to be pushed around.

Fred went on to medical school, and in 1905, began his practice in Minneapolis. Aunt Kitty made her home with his family until his death at 80.

Now, still alert and active after 109 years, she makes her home with Mrs. Bernard Clanton, a distantly related niece.

The broad, storm-lashed prairies Aunt Kitty knew so well have been carved into farms and ranches and cattle have replaced the buffalo. Broad, paved highways have replaced the rutted trails and fine homes have been built where rough shacks once stood.

Women like Aunt Kitty made it possible.

OUR INTERNATIONAL RESPONSIBILITY

Mr. PROXMIRE. Mr. President, for the past few days I have been drawing excerpts from the Universal Declaration of Human Rights preamble, adopted by the United Nations General Assembly on December 10, 1948, to show the implications of this most important document in relation to the status of human rights in this country. Specifically, I have attempted to relate the status of human rights in this Nation to the need for this Chamber to ratify the Human Rights Conventions on Political Rights for Women, on Forced Labor, and on Genocide.

Our international responsibility in this matter cannot be denied. It is for the purpose of clarifying our international responsibility that the preamble of the Universal Declaration is stated in its entirety below:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

As the preamble states, each member state of the United Nations has affirmed its faith in fundamental human rights. This affirmation included "the equal rights of men and women." Why, then, if we have attested to the equality of men and women in this agreement can we not do so by ratifying the Human Rights Convention on Political Rights for Women? I suggest that we are not meeting our international responsibilities.

The preamble also stated that each membr state had pledged itself to "the promotion of universal respect for and observance of human rights and fundamental freedoms." What would be a better means of promoting respect for these most basic rights than by ratifying the human rights conventions that I have mentioned?

In the last paragraph of the preamble a means by which to promote international respect for these rights is mentioned. The preamble suggested that by "progressive measures," national and international, the recognition, and observance of these rights could be attained. The three human rights conventions that I have urged this body to ratify are examples of the progressive measures to which the preamble refers. Only through the ratification of these conventions will this Chamber and the Nation fulfill our international responsibility to mankind.

CONCRETE SHOES ON SEAWAY

Mr. MONDALE. Mr. President, the Duluth News-Tribune last week published an editorial on the St. Lawrence Seaway under the interesting title "Concrete Shoes on Seaway." Describing the proposed "St. Lawrence Seaway Amendments of 1969," S. 3137 as a "sound and fair proposal," the editorial contrasted the "Scrooge-like arrangement" made for the seaway with the "easy" financial arrangements made for other major waterways.

I think the time has come for Congress to remove those "concrete shoes" from the seaway by lifting the debt and making it possible for tolls to be lowered. Only then, as the News-Tribune says:

The full trade potential of the seaway might be realized.

I ask unanimous consent that this challenging editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Duluth (Minn.) News-Tribune, Nov. 14, 1969]

CONCRETE SHOES ON SEAWAY

The St. Lawrence Seaway clearly has been discriminated against by the United States government.

Compare the easy financial arrangements made by the government for other major waterways with the Scrooge-like arrangement made for the St. Lawrence Seaway.

—The government has spent more than $56 million to develop the Gulf Intercoastal Waterway and an additional $50 million for maintenance and operation.

—The government has spent $62 million to develop the 76-mile Mississippi River-Gulf Outlet and almost $11 million for maintenance and operation.

—The government has spent $33 million to develop the 50-mile Houston Ship Channel and another $37 million for maintenance and operation.

All of this has been done out of the graciousness of the government. None of these waterways has been required to repay the federal investment.

The St. Lawrence Seaway Corp., however, has been required to repay the government the $120 million capital cost of developing the 2,342-mile Seaway, plus interest, by the year 2009. Also, the Seaway has been required to pay its own maintenance and operation costs out of toll fees.

Given these concrete shoes, the Seaway hasn't been able to keep its head above water. The Seaway Corp. has returned $33 million to the government in the form of interest, but even with this payment, the corporation has fallen in arrears $12½ million in interest charges.

To improve the Seaway's financial position, Congress has considered raising Seaway tolls. These are high now, however, owing to the pressures on Congress from Eastern railroad interests and shipping interests along the Atlantic Coast. To bring the Seaway into the black, tolls would have to be raised 30 to 60 per cent, which would result in diverting Seaway commerce to the railroads and other ports.

Sen. Mondale has compiled this information in the interests of promoting federal legislation to write off the cost of the Seaway, leaving the Seaway Corp. responsible for its own maintenance and operation costs, to be paid out of toll revenues. Any surplus revenues would be paid to the government.

This is a sound and fair proposal. The alternatives are to leave the Seaway responsible for the debt which would increase to $821 million by the year 2009, when it is supposed to be paid off. Or tolls may be raised 30 to 60 per cent. Either alternative could result in a closing down of the Seaway.

The government must decide, then, if it wants the Seaway. If it does, then it must lift the debt. The year before the Seaway opened, less than 12 million tons of cargo moved on the St. Lawrence. Last year, the volume was 48 million tons. These figures alone indicate a commercial advantage in the Seaway. If the debt was lifted and tolls could be lowered, the full trade potential of the Seaway might be realized.

THE NEWSPAPER PRESERVATION ACT

Mr. BAYH. Mr. President, I endorse and support the Newspaper Preservation Act. As one of the original sponsors who

joined with Senator Carl Hayden in the last Congress in introducing S. 1312, the predecessor of S. 1520, I believed then as now that the bill will preserve independent news voices at a time when such independent media are at a premium.

We are all aware of the demise of many of our great metropolitan newspapers over the past several years. The unfortunate facts of newspaper economics are that no new papers have taken their places in these cities. Nor, to my knowledge, has there been a successful new newspaper in any major city in some 40 years.

We have seen chains of newspapers proliferate. It seems that whenever a newspaper is offered for sale, it is purchased by a chain. Even more often, cities which only recently boasted of two, three or more separate newspapers, frequently are reduced to only one paper, or to two papers with but one owner.

In short, there has been a continuing reduction in news and editorial competition, as well as a decline in the number of production employment opportunities in the industry. Newspapers no longer are immune to competition for advertising revenue or for the time of the reader/consumer. Magazines, television, radio, billboards and specialty advertisers have all cut into newspaper revenues. The crunch of economic losses, together with increasing costs of production, has resulted in many newspaper closings.

In my home State of Indiana, in both Evansville and Fort Wayne, there are joint operating arrangements which amount to commercial mergers of the two papers in each city, while each journal maintains a separate and independent news and editorial voice. I have been advised that without the relief provided by the Newspaper Preservation Act, only one newspaper would survive in each city. This would not be in the public interest.

In the experience of the Indiana examples I have cited, the joint operating agreements have provided those cities with strong, independent operations and have not adversely affected skilled printing trade employment. By continuing the two entities and requiring production of two papers each day, the combined employment opportunities are maintained.

Mr. President, it has often been said that this great country was nurtured on the competition of thoughts and ideas as well as the economic competition of capitalism. It should be obvious that when, because of economic conditions in the industry, commercial competition between two newspapers in the same city can no longer be sustained, we should take steps to insure continued news and editorial competition. That is what the Newspaper Preservation Act is designed to accomplish.

This bill recognizes a joint newspaper operating arrangement as a commercial merger, thus placing it in the same legal status as one owner of morning and afternoon papers. The bill also provides a practical and realistic definition of a "failing newspaper"—a definition that is in accord with the economics of newspaper publication. This definition is essential to overcome the definition employed by the Supreme Court in Citizen Publishing Company against United States.

Mr. President, the two newspapers in Evansville entered into their joint operating arrangement in 1938, over 30 years ago, and a like arrangement was entered into in Fort Wayne in 1950, almost 20 years ago. These newspapers were certainly not aware at that time of the definition enunciated in the Citizen Publishing case. For that matter, none of the publishers in the 22 cities with joint operating arrangements knew of the limitations which were so recently stated. All of these publishers assumed that they were acting lawfully, and for over 30 years these arrangements—though known to Congress and the Justice Department—were never questioned.

I believe it would be unfair now to punish these publishers. Even more important, it would be ridiculous to punish the public by putting newspapers out of business. Congress should enact S. 1520 to do just what the title states—preserve newspapers.

CONFERENCE REPORT ON INTEREST EQUALIZATION TAX ACT WITH AMMUNITION AMENDMENT

Mr. DODD. Mr. President, I regret that I was unable to be in the Chamber yesterday when, by a voice vote, the Senate agreed to the conference report on the Interest Equalization Tax Extension Act containing an amendment deleting ammunition recordkeeping requirements on rifle bullets and on shotgun shells from the Gun Control Act of 1968.

Let there be no mistake that this represents the first effort of the gun lobby to completely dismantle the Gun Control Act.

This has been made clear by the gun lobby and their spokesmen in Congress.

On Wednesday of this week, during the consideration of that report in the other body, two Members of the House said that this was the first step toward repeal of he 1968 Gun Control Act.

On the floor of the House a leading opponent of firearms controls and former member of the board of directors of the National Rifle Association said:

> By today's action we are taking only one step. We should not lessen our efforts until last year's bill is repealed or rewritten in more reasonable form.

The significance of our action is that the pace has been set to attempt to erase from the Federal statute books the first effective Federal gun control that this country has known.

It represents an initial weakening of a law that was some 8 years in the making.

The Gun Control Act of 1968 was endorsed by virtually every respected and responsible law enforcement official in the land.

It was endorsed by the American Bar Association.

It was enacted with bipartisan support in this body and in the other body.

However, it no sooner became law in December of 1968 than the empassioned pleadings of the gun lobby began to be heard.

And today the results of their pressure tactics are apparent in the softening of the provisions of the Gun Control Act.

It was only 4 days ago that I made known to the Senate the results of the Juvenile Delinquency Subcommittee's investigation inquiring into the backgrounds of ammunition purchasers.

I cited the results of our effort to substantiate my view that recordkeeping does serve as an aid to law enforcement and shall repeat them again at this juncture.

Of the 177 persons whose names, addresses, and dates of birth were submitted to the Federal Bureau of Investigation, 66, or 37 percent, had criminal arrest records.

Included in these records were 203 misdemeanor convictions. This is a minimal figure as some cases are current and still before the courts, and in other cases, no disposition was recorded.

Seventeen arrests involved firearms.

Our study revealed that ammunition was sold to persons convicted for murder, armed robbery, assault, assault with dangerous weapons, rape, grand larceny, and a variety of firearms charges.

A summary of the major charges against these ammunition buyers includes: two murders; one attempted murder; 38 assaults, including 14 assaults with dangerous weapons involving at least five guns; 11 grand larcenies; five rapes; eight "carrying dangerous weapons"; seven robberies, including two armed robberies; one sale of marihuana; seven housbreakings; two "fugitive from justice" charges; 136 drunk charges and related offenses; one possession of a gun after conviction of a crime of violence in the District of Columbia; one interstate transportation of firearms; eight auto thefts; and eight carrying dangerous weapon charges, including at least two guns.

A closer look at the records of some of these "hunters" and "sportsmen" reveals a pattern that should shock those who advocate free access to ammunition. I will briefly describe the more flagrant cases of the sales of bullets and shells to some of the unsavory characters who patronized Maryland gun dealers.

A fugitive from justice, fleeing his parole in April of this year, bought ammunition in May. His record includes convictions for crimes of violence and for possession of a gun after being convicted of violent crimes in the District of Columbia. Since his purchase in May, this ex-con was arrested in August for breaking and entering and in October, just last month, he was arrested for armed robbery.

An ex-convict with arrests for assault with intent to rape, a 12-year conviction for murder, and other assault charges, bought ammunition in February 1969, and was arrested for armed robbery in August.

Arrested previously for assault with a deadly weapon and for enticing young children, another individual bought ammunition in January 1969 and was arrested in August for assault with a gun.

On June 10, 1969, one man purchased ammunition and 10 days later was arrested for the sale of marihuana.

Another man bought ammunition in March of 1969 and was arrested in August for assault with a gun.

A man with arrests for assault with a gun in 1964 and for second degree murder in 1967 bought supplies to make his own handgun cartridges on three visits to the Suitland Trading Post in April and May of 1969.

Still on probation for a conviction of assault with a gun, one man bought ammunition on July 15, 1969. He had two other charges for assault with guns in 1946 and 1949, the latter a conviction on a reduced charge of assault.

Out of prison exactly 5 months, a man convicted of interstate transportation of firearms and gambling paraphernalia purchased ammunition on February 22, 1969. His record also includes a conviction for robbery in 1950 and an arrest in 1956 for breaking and entering.

Known to be violent, with a record of assault with a razor, this individual bought ammunition in March 1969 and was picked up in April for carrying a deadly weapon, a gun.

The information I have just recited took a subcommittee investigator a matter of hours to obtain.

Congress has now given the green light to the marauders and robbers who roam our streets with high-powered rifles and with shotguns by insuring that they will have a ready supply of ammunition to ply their trade.

Surely a rifle bullet or a shotgun shell is just as deadly as is a pistol or revolver bullet.

However, Congress apparently does not believe so.

Perhaps the 23 members of the Weatherman faction of the SDS, who were arrested just this week in Cambridge, Mass., in the sniping attack of a police station will revel at the action taken by the Congress.

The weapons confiscated from this grouy of radicals included four rifles and a shotgun.

Apparently, the Weathermen accede to the credo of the gun lobby which urges an armed citizenry.

In addition to the weapons confiscated, police seized .22-caliber and .30-caliber ammunition and shotgun shells. Thanks to the gun lobby and a confused Congress, future SDS'ers will not have to worry about buying high-powered bullets and shotgun shells to use in their sniping activities.

And if the plans of the gun lobby go according to schedule, it will not be long before the .22-caliber rimfire ammunition is once again available with no questions asked.

The congressional spokesman for the ammunition dealers deplored and "regretted" the fact that the Senate had not removed controls over this deadly little item. The SDS'ers can delight in the fact that Members of Congress resolved that their next task would be to repeal the act's controls over 3½ billion more bullets as quickly as possible.

The debate on the conference report on H.R. 12829 in the House contains an excerpt of a letter by Dr. Charles E. Walker, Under Secretary of the Treasury, to the effect that the Treasury Department favors the ammunition amendment to H.R. 12829.

As it appears in the CONGRESSIONAL RECORD of November 19, a part of that letter reads:

> The Department favors the Senate amendment to H.R. 12829 dealing with ammunition recordkeeping requirements. The Department has found that the records required of transactions in sporting type ammunition, primarily shotgun and rifle ammunition, are not effective as a law enforcement tool. The recordkeeping requirements, however, because of the volume of transactions in sporting ammunition, tend to generate criticism from sportsmen and others and detract from the effective enforcement of other provisions of the firearms laws. The amendment does not affect the recordkeeping requirements concerning pistol and revolver ammunition, nor .22 caliber rimfire ammunition, nor does it affect the existing controls of interstate shipment and sales by licensees to prohibited persons. We believe, therefore, that the amendment is desirable.

Mr. President, I question whether the Treasury Department has devoted any effort to enforcing the ammunition recordkeeping provisions of the Gun Control Act, in view of the findings of our inquiry into the sale of ammunition by Maryland dealers to residents of the District of Columbia who are known criminals.

This judgment is supported by the testimony of the Commissioner of the Internal Revenue Service before the Juvenile Delinquency Subcommittee just 3 months ago. At that time he said:

> It is only fair to report to the subcommittee that we are not able to process or check individual ammunition sales records in any meaningful way . . .

He attributed this lack of enforcement of the ammunition provisions to a shortage of personnel. However, I am convinced that these provisions of the act could be enforced by a minimal number of agents at least in the major cities in the United States where crime is running rampant.

It is for these reasons I have forwarded to Secretary of the Treasury Kennedy the results of our inquiry, which I believe show violations of the Gun Control Act prohibitions against the purchase of ammunition by convicted felons.

I have asked of Secretary Kennedy that he keep Congress informed on these cases.

Mr. President, gun crimes in the United States continue to mount and it is only through effective enforcement of existing Federal controls and with enactment of additional controls at the State and local levels of government that this trend will be reversed.

One would think that the Treasury Department, the enforcing agency of our Federal gun laws, would be urging retention of provisions of the Gun Control Act of 1968, rather than urging their repeal, especially when the law has been on the books too short a time to measure its effect.

Congress has not heard the last from the gun lobby. I only hope that we will not again flaccidly yield to their pressures.

Mr. President, knocking these ammunition controls out of the law is an invitation to every criminal and punk in the country to go out and buy ammunition legally for the gun he now owns illegally.

It is an invitation to more crime.

Let us not fool ourselves: The free and easy sale of ammunition to all comers, as our subcommittee investigations have irrefutably shown, results in more criminals buying more ammunition to commit more crimes.

The Senate should have it recorded that in removing ammunition from control, it implemented the master plan to dismantle the 1968 Firearms Control Act that was set in motion by the Gun lobby a matter of weeks after the act became law.

Mr. President, I ask unanimous consent that the articles from the American Rifleman, the voice of the National Rifle Association, and Shooting Industry magazine be printed at this point in the RECORD.

The articles clearly state the intent of the lobby in extracting ammunition from the law.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the American Rifleman, February 1969]

THE AMMUNITION FARCE

If a Federal law required every motorist who bought gas to give his name, address, age, and driver's license identification because a few hoodlums use gasoline for Molotov cocktails, the public protest would rock the Nation.

Something similar has been imposed on firearms owners under the 1968 Gun Control Law, and an outcry against it as being outrageous and ridiculous is shaping up. Without guessing at the decibel count, it can be predicted that it will be highly audible.

An estimated 40 to 50 million Americans buy ammunition at some time or another for some legal purpose. They have as much right to do so, unharassed by red tape and legalistic nonsense, as the purchasers of gasoline, liquor, cigarettes, television sets, or anything else.

The Gun Control Law passed by Congress last October virtually says as much. Its preamble asserts that it is intended to control crime and is *not* intended "to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms. . . ."

Obviously, firearms cannot be used without ammunition. So the Congress apparently intended the law-abiding citizens should have unhampered access to ammunition.

Yet, somewhat in contradiction to this ringing resolve, the law as passed required under Sec. 922b(5) that dealers keep in their records "the name, age and place of residence" of individuals and the identity of corporations buying ammunition.

While the Federal administrators of the law have sought to apply this requirement as reasonably as possible, it affects an estimated 100,000 firearms dealers and perhaps 2 to 5 times that many assorted businesses which sell ammunition but not guns. In rural and isolated areas, groceries, drugstores, filling stations and the like stock smallarms cartridges and shells. Thus hundreds of thousands of dealers are being obligated, if they choose to stay in business, to keep detailed records of every sale and every buyer. The mass of paperwork threatens to be as monumental as it is useless.

Very little if any of all this can serve the least purpose in reducing crime, the avowed aim of the Gun Control Law. Ammunition

carries no serial numbers, many cartridge cases are reloaded and lose some of their already limited identity, and, as leading U.S. experts pointed out in this magazine (Oct. 1968, pages 37–47), it can be exceedingly difficult to trace ammunition that has been used illegally even when there are apparent connections between specific rounds and a definite crime.

Actually, ammunition is as numerous and anonymous as the sands of the sea—or matches in the hands of millions of smokers. (Arson is a major crime. Who proposes curbing arson by registering match buyers?)

The requirement that every honest person who buys so much as a 75¢ box of .22 rimfire cartridges give personal data and identification and be registered on a dealer record goes counter to the declared purpose of the Gun Control Law and constitutes an unwarranted and unnecessary burden on both buyer and seller.

From time to time, lawmakers with the best of intentions have banned liquor, contraceptives, and supposedly naughty books. Without entering into the pros and cons, it can be said that the usual result of such bans is to boost the black market sales of the prohibited items.

Without question, the ammunition restrictions can readily be changed and there is reason to hope that they will be.

Soon after Congress convened, Rep. Al Ullman (2d Dist., Oreg.) introduced a bill, H.R. 913, to exempt smallarms ammunition from provisions of the 1968 Gun Control Act. It was referred to the House Judiciary Committee. Other such measures may be expected in both Senate and House.

The Congress could render a distinct service to many millions of good Americans by amending the Gun Control Law to confine it to its expressed purpose of repressing crime without harassing law-abiding citizens with silly, pointless regulations.

[From the American Rifleman, March 1969]

ACTION ON AMMUNITION

As we forecast editorially last month, a determined effort is underway in Congress to uproot the farcical red-tape regulation of ammunition sales under the 1968 Gun Control Law.

A quarter of the entire Senate is behind the move there from the start, as sponsors of S. 845. Bills to exempt ammunition from the law have been coming into the House at the brisk rate of one a week.

As Senate spokesmen for S. 845 pointed out, the Treasury Department regulations handed down under the outgoing Johnson Administration (approved by the then IRS Commissioner, Sheldon Cohen) appear to have overstepped and gone far beyond the will and intent of Congress in passing the Gun Control Law.

The most that Congress intended was that the name, age, and address of ammunition and gun buyers be listed. The IRS added requirements for dealers to record the make of ammunition or gun, caliber or gauge, and other details not specified by Congress.

The result: What we referred to editorially as being "registered on a dealer record" (AMERICAN RIFLEMAN, Feb. 1969, p. 14, col. 2) and what Sen. Bennett of Utah aptly termed "backdoor registration" of gun owner, gun and ammunition at one fell swoop.

While any modification of this unnecessary regulation is far better in the eyes of most U.S. gun owners than none, one difference between the Senate and House measures in their early stages deserves mention.

S. 845, while proposing to exempt rifle, shotgun and all .22 rimfire ammunition from the law, apparently would leave handgun ammunition subject to the requirement that the buyer list at least his name, age and address. Most of the House bills thus far introduced would exempt all small-arms ammunition, handgun as well as long arms.

The handgun is used legitimately by millions of target shooters and hunters as well as for home protection. True, it is short and concealable, more so than rifles or shotguns, which seldom figure in crime. In itself, however, it is no more inherently criminal than a pair of scissors, a piece of rope or a brick.

Therefore, millions of Americans can see no reason to discriminate against ammunition for handguns.

Except for those who fervently believe in "pass-a-law" as a cure-all for every conceivable social problem, however, nearly all will welcome any reduction in ammunition red-tape.

[From the Shooting Industry, October 1969]

WASHINGTON HOT-LINE

There is a bill pending before the Senate Committee on Finance seeking to modify ammunition record keeping requirements for dealers and others setting to the public. The measure (S. 2718) was introduced by Senator Wallace Bennett (R.—Utah), a high-ranking member of the minority side of the committee. The bill also has the backing of the Nixon Administration and of 40 leading democrat and republican senators. Chances are it will pass the Senate without too much opposition.

The meaty part of the bill reads as follows: ". . . no person holding a Federal license under chapter 44 of title 18, United States Code shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles, .22 caliber rimfire ammuntion, or component parts for the aforesaid types of ammunition."

Does this amendment mean that any one can buy rifle, shotgun and .22 caliber rimfire ammunition? What about component parts that are designed for use in rifles and shotguns, but can be used in the reloading of handgun ammunition?

We must remember that the Alcohol, Tobacco Tax and Firearms division of IRS now have new bosses. What interpretation will be made should this bill pass, is interesting to contemplate.

It is safe to project that we will see some flip flop in viewpoints and regulations should there be a party change in the Administration. Why then was the proposed law written in this manner?

This is not the first bill to amend the law covering ammunition introduced by Sen. Bennett. The first one, S. 845, spelled it out clearly. "The term ammunition shall include only ammunition for a destructive device and pistol or revolver ammunition, it shall not include shotgun shells, metallic ammunition suitable for use only in rifles, or .22 caliber rimfire ammunition."

The trouble was that the bill was a straightforward amendment to the 1968 Gun Control Act. As such, it had to be referred to the Judiciary Committee. It had several cosigners and stood a good chance of passing.

Once passed the Senate, however, it would be passed to the House and automatically to the Judiciary Committee. Chairman of the Committee, Emanuel Celler of Brooklyn, N.Y., announced his intentions to kill the bill by holding it in committee. And, he could do it, too. He has the backing of his ranking republican on the minority side, Congressman William McCulloch of Ohio.

It was these two, working together, along with the minority and majority staff members, who put the ammunition section in the 1968 Act. Just why McCulloch, a congressman from Piqua, Ohio, went for the anti-gun legislation last Congress is one of the mysteries surrounding passage of the law. It is this observer's opinion that he traded favor for favor.

Obviously, Sen. Bennett, in trying to amend the 1968 Act, had to route the measure through Congress in such a manner as to avoid the House Judiciary Committee. The plan was, and still is at this writing, to attach the amendment onto legislation that has already passed the house.

But, the measure had to be written in such a way as to have it referred to his Senate Finance Committee. S. 2718 is written in such a manner.

Now, the right bill is needed on which this amendment can be attached. Sen. Bennett is waiting on a bill that has passed the House, and one that will pass the Senate with little difficulty. He will offer his ammunition amendment on the floor of the Senate and then move that the Senate request a conference with the House.

In this manner the measure will not only avoid the House Judiciary committee, but will be presented to the House for a "yes" or "no" vote. The bill chosen must not be a measure originally considered by the House Judiciary Committee. If so, Celler and McCulloch will be members of the House-Senate conference.

If this happens, the best the shooting fraternity can hope for is a recommendation by the House side of the conferees that the measure be reconsidered by the original House committee before a vote. The only difference would be that we have a man in the White House who is not committed to an anti-gun policy. The White House could, perhaps, bring pressure on Congressman McCulloch to differ with Celler.

In any event, if all goes well, by this hunting season, S. 2718, by Sen. Bennett, will be part of the law of the land. The strategy being used by Bennett is a good example of how difficult it is to correct bad legislation once it is enacted.

Mr. DODD. Mr. President, I should like the RECORD to contain the following comments representative of the larger public view on firearms, such as those made by George Tilford in the Indianapolis, Ind., News on October 16, 1969. He said:

Gun control doesn't hurt the hunter.

An editorial from the Erie, Pa., Times of October 17, 1969, concludes:

The nation may pay a continued fearful price for the power in Congress of the Gun Lobby.

An editorial from the Bay City, Mich., Times of October 16, 1969, telling of "700,000 cheap handguns" being manufactured in America this year for local consumption.

Finally, an editorial published in the Riverside, Calif., Press, reminds Members of Congress of the kind of thing that happens when the average, untrained head of a household keeps a gun around the home for self-protection. The editorial is entitled "Do Guns Make The Home Safer?"

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Indianapolis (Ind.) News, Oct. 16, 1969]

GUN CONTROL LAW DOESN'T HURT HUNTER

(By George Tilford)

Let it be reiterated: The Gun Control Act of 1968 was in no way intended to hinder the activities of hunters and sportsmen.

James Scanlan, chief special investigator for the Internal Revenue Service's alcohol, tobacco and firearms department in Indiana points this out as the Indiana hunting season nears.

"The act was passed by Congress to help federal, state and local law enforcement officials in their fight against crime and vio-

lence," Scanlan pointed out. "It was not intended to hinder hunters.

"For example, hunters and sportsmen can purchase ammunition in any state and, likewise, can carry their own firearms across a state line as long as they are not convicted felons, or under indictment for a felony, fugitives from justice, unlawful users of drugs or mental incompetents.

"Hunters, sportsmen, competitive shooters or anyone legally using a gun in a state other than his home state can acquire another firearm if his rifle or shotgun is lost, stolen or becomes inoperative."

The law requires only that the buyer in these circumstances make out an affadavit for the dealer's records and provide the dealer with the title of the chief law enforcement officer in his home area.

[From the Erie (Pa.) Times, Oct. 17, 1969]

THE GUN LOBBY

In this volatile period in America's history, with the assassination of President John Kennedy, Senator Robert Kennedy and Martin Luther King still fresh in our memory, with guns a source of major concern to law enforcement officers everywhere, you'd think the pressure in Congress would be for more, not less, gun controls.

FBI Director J. Edgar Hoover, for instance, has stated: "I see no great problem to the individual in requiring all guns to be registered, if the owner has nothing to hide and if he is a law-abiding citizen."

Congress, however, prodded by the gun lobby, is seemingly bent on ignoring FBI Director Hoover. Despite a plea from Sen. Edward Kennedy, a bill introduced by Sen. Wallace F. Bennett, Utah Republican, continues to move toward final passage.

The bill provides that no gun dealer "shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles, .22 caliber rimfire ammunition, or component parts for the aforesaid types of ammunition."

Sen. Bennett and the 46—yes, 46—cosponsors of this bill do not mention it would remove even the present limited controls on the types of ammunition which were used to kill President Kennedy, Sen. Kennedy and Rev. King.

The nation may pay a continued fearful price for the power in Congress of the gun lobby.

[From the Bay City (Mich.) Times, Oct. 16, 1969]

GUN CONTROLS

Just about a year ago—it was Oct 10, 1968—Congress completed action on a gun control bill which, among other things, required the seller of ammunition to record the purchaser's name, age and address. Congress is now in the midst of exempting most ammunition from the requirement—including .22 caliber rimfire bullets.

This type of ammunition is used frequently in pistols that police describe as "Saturday night specials." They are cheap and thus easily obtained handguns. Until the 1968 law plugged the import market, those found in the United States were likely to be foreign-made. But American gun manufacturers have taken up the slack. Donald E. Santarelli, the Associate Deputy Attorney General, told a Senate Judiciary subcommittee last July 24 that American production of cheap handguns might reach 700,000 this year, compared to 60,000 in 1968.

The Senate Finance committee voted the exemption Sept. 19 and, to speed congressional passage in time for the fall hunting season, attached it to an unrelated House-passed bill (H.R. 12829). Sen. Wallace F. Bennett (R Utah), one of 46 senate sponsors of the amendment, explained that the present record-keeping provision is a burden on sportsmen. Spokesmen for the Nixon administration have said that it will not push for a national gun-registration and licensing law because the record-keeping would be a burden to law enforcement agencies.

Meanwhile, the FBI disclosed in its latest semi-annual report armed robberies increased 17 per cent during the first half of 1969 compared with the same period of 1968. In Washington, D.C., the increase was 46 per cent.

[From the Riverside (Calif.) Press, Oct. 26, 1969]

DO GUNS MAKE THE HOME SAFER?

Of all the arguments against gun control, the most appealing is the one advanced by Gerald Martin in today's Readers' Open Forum below:

The claim to an individual's right to keep and bear arms misreads the Constitution. The clamor about needing an armed citizenry to resist a "Communist takeover" is strictly from hysteria. But the need of a man to feel secure from intruders in his own home is both genuine and deep-rooted. This is the need that concerns Mr. Martin.

Still, the question might be: Does the presence of a hand gun in the home really add to security? For every home robbery foiled by an amateur pitted against a professional, how many homeowners lose a shootout? How many more kill or maim themselves or loved ones when there is no external danger?

Charles A. O'Brien, chief deputy in the office of the California Attorney General, says: "Perhaps the public is beginning to realize, and especially families with children, that having hand guns in the house may be more destructive than protective." It is unlikely that adequate statistics have been kept, but there are various kinds of supporting evidence.

For example, here are some items culled from published news stories of the last three months. All are verbatim excerpts from local news reports or major wire service dispatches.

Item (Los Angeles): Two young men who said they were shooting at a case of dynamite to see if something would happen were critically injured last night when the dynamite exploded in a West Los Angeles duplex.

Item (Northridge): Mrs. Fleming told police she was talking to Mrs. McGinty Sunday about a burglar who entered the house a year ago and said, "I'll show you how I would have handled that burglar." She got a gun, which she said she thought was unloaded and pulled the trigger. The bullet hit Mrs. McGinty in the head.

Item (San Bernardino): Daniel L. Odle, 18, who accidentally shot himself while playing with an "unloaded" revolver Aug. 7 died in St. Bernardine's Hospital.

Item (Detroit): Police reported that John Boggan, 69, who is totally blind, apparently mistook his wife for a burglar early yesterday and shot her to death in their home.

Item (Quincy, Ill.): An 8-year old boy was shot between the eyes Monday as he and his father were practicing fast draw techniques in the kitchen of their home, police said.

Item (Fontana): A 17-year-old Fontana youth was killed playing Russian roulette with a .38 caliber revolver.

Item (Rubidoux): A local businessman accidentally shot and killed himself here yesterday morning while investigating sounds coming from the rear of his home trailer firm.

BLUE-RIBBON COMMISSION TO EXAMINE OPERATIONS OF DEPARTMENT OF STATE AND RELATED AGENCIES

Mr. FULBRIGHT. Mr. President, on October 7, 1969, I introduced Senate Joint Resolution 157 calling for the appointment of a blue-ribbon Presidential Commission to examine the operations, in the United States and abroad, of the Foreign Service, the Department of State, the Agency for International Development, and the U.S. Information Agency.

I have received several letters regarding this proposal which I think might interest Senators. They are from the Honorable James W. Riddleberger, a retired career Ambassador, who, in the course of 39 years in the Foreign Service, served as Ambassador to Yugoslavia, Greece, and Austria, as Director of the International Cooperation Administration, and as Chairman of the Development Assistance Committee of the OECD; Frank Stanton, president of the Columbia Broadcasting System; and Sigurd Larmon, former president of Young & Rubicam.

I ask unanimous consent that the letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

POPULATION CRISIS COMMITTEE,
Washington, D.C., October 16, 1969.

HON. J. WILLIAM FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: As you may observe from the letterhead, my return to country life in Virginia (following my retirement from the Foreign Service) did not last very long. General Draper has a very persuasive personality and thus I am back at work in Washington trying to help find solutions to population problems, which I know are of interest to you as well. But the purpose of this letter is not to discuss this important issue, but rather to offer some comment upon your recent initiative as embodied in Senate Joint Resolution 157.

I was in Europe last year when you made your statement in the Senate on May 22, 1968, which naturally was widely discussed in the Embassies I visited, and upon my return immediately read it and the exhibits with the most attentive interest. Last week, I read in the *Congressional Record* of October 7, 1969, your statement which accompanied the introduction of the Senate Joint Resolution 157 with equal attention. The purpose of this letter is to endorse your proposal for an objective examination, here and abroad, of the Foreign Service, the Department of State, AID, and USIA, by an outstanding Presidential Commission. I thought you were right last year and am equally convinced now that the time has come to embark upon this kind of review of our governmental structure in the execution of our foreign policy.

In submitting this expression of approval, I venture to recall that I was in the government service from 1924 until my retirement in 1968. Of this time, I spent approximately 39 years in the Foreign Service of the U.S. and retired with the rank of Career Ambassador. I hasten to add that in supporting your resolution, there is no feeling of frustration or disappointment on my part. No Foreign Service Officer could have had a more satisfying career or been more amply rewarded for his efforts than I have been. From 1952 until 1968, I was successively Director of the German Bureau with the rank of Assistant Secretary, Ambassador to Yugoslavia, Ambassador to Greece, Director of the International Cooperation Administration, Chairman of the Development Assistance Committee of the O.E.C.D., and Ambassador to Austria. Earlier, I had been Political Advisor both to General Lucius D. Clay and High Commissioner John J. McCloy in Germany. I served in both Berlin and London

during the war, and was also on duty in Berlin throughout the blockade. I was on loan to the Marshall Plan organization in Paris from 1950 to 1952. I recite these assignments merely to underline that obviously I could have no personal complaint, and to illustrate the wide variety of assignments which I have enjoyed.

I am completely persuaded that an examination of our whole foreign service establishment is urgently required and should be undertaken by an impartial commission, such as you propose. I say this not only from the experience of a Foreign Service officer in the normal activities of diplomacy, but speaking as one who has participated intimately in economic warfare, military government, Marshall Plan efforts and aid to underdeveloped countries. I shall not attempt to set forth here all the reasons why I believe this commission should be established. You indicated in your two statements introducing the resolutions a number of valid reasons why such a study should be authorized. The formula you have proposed for the Commission strikes me as most sensible in that it will provide for representation from the Congress and enable the President to appoint other members of high qualification in foreign affairs. If the President so desired, he could appoint members who have previously served in either Congress or the Executive Branch. This formula should make possible the establishment of a truly first-class board, whose membership could represent a wide variety of experience in the conduct of our foreign affairs and whose eventual recommendations would carry great weight.

Although at the moment I am deeply engaged in population problems, if there is any way in which I could contribute to the success of your initiative, I stand ready to do whatever I can.

With warmest regards,

Sincerely yours,

JAMES W. RIDDLEBERGER,
National Chairman.

NEW YORK, *October 16, 1969.*

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR BILL: I am delighted by the news that S.J. Res. 173 has been reinstated on the agenda of the Senate as S.J. Res. 157. By whatever number, it is an imperative legislative step toward a goal of the greatest importance to the future conduct of our nation's foreign affairs.

If there is anything that the Advisory Commission or I, personally, can do to further advance its priority or passage, I hope you will let me know.

With all good wishes,

Sincerely,

FRANK STANTON.

NEW YORK, *October 23, 1969.*

Hon. J. W. FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: It was my privilege to meet with you on a number of occasions during my fifteen years service on the U.S. Advisory Commission on Information.

This is to express the hope that you get early and positive action on Senate Joint Resolution 157.

Times and changing world conditions call for reassessment of our overseas policy, purpose and performance. The need is urgent.

May I comment especially on two facets of your proposal.

First—it is an over-all study of the agencies involved in our foreign service.

In the foreign services, Agencies are interdependent as you so well know. To study one agency alone as has been suggested for USIA would be to tackle one part of the problem without relating it to the whole.

We have one policy—to preserve world peace and build respect, good will and understanding for the United States. There should be an across the board evaluation of organization, manpower and morale. This should include a study of the entire outgo in resources together with any waste or duplication that presently exists.

Second—your proposal calls for the inclusion in the Commission of four members from the Congress.

Having Congress represented on the Commission should insure that there will be action on the recommendations in the report.

The history of other Commissions—Sprague, Herter, Wriston and Jackson (on which I served) was that the reports were well received but there was lack of follow through, and the long range results were disappointing.

The proposed over all study could not be more timely. There is need that the resources available to our Government in Washington and overseas be restructured to meet the challenges of today and the years ahead.

With all good wishes,

Sincerely,

SIGURD S. LARMON.

MORATORIUM DAY ADDRESS BY SENATOR MONDALE

Mr. MONDALE. Mr. President, the past weekend again brought to mind the great burden which the war in Vietnam is placing on our young. We saw both the depth of their concern and their willingness to continue to work within the confines of law, order, and established political processes.

Our young people are not all of a single mind on every issue and detail of the war. But they are all immensely troubled by it, and I think that we should not forget what we ask of the young men who must serve in this tragic war.

I spoke on this topic last month at Macalester College during the moratorium day rally. I ask unanimous consent that these words be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS GIVEN BY SENATOR WALTER F. MONDALE TO THE MINNESOTA MORATORIUM DAY RALLY, MACALESTER COLLEGE, OCTOBER 15, 1969

As a former student of this college, I must say that I never thought I would see this many people at a Macalester event.

Now I know why Washington government has worked harder this past week than at any time in American history. Miracles are happening. After 28 years Hershey has four stars and is on his way. And unless I miss my guess, we are going to see more and greater miracles this year.

Just a few months ago everyone would have said that the Mets would never win the pennant and would never have a chance for the World Series. Tonight we know that they have won the pennant and have a good chance of winning the Series.

A few months ago most people would have predicted that there is no way to bring the Vietnam War to a head or to mount a demonstration which would show that the American people are tired of this war and want it ended. But that miracle is happening today in this country. Not only are the millions of people who turned out today in the cause of peace in Vietnam unique in the history of this country, but I suspect never in the history of all nations have more people turned out voluntarily to express their disgust with war. Surely, this is a message our President cannot ignore.

It is quite clear that a majority of American people now oppose this war. A poll last week showed that 57% of all Americans want to end the war within 14 months. And a poll showed that 58% of the Americans believe that this war was a mistake from the beginning.

Each day brings more support to the cause of peace and to the disavowal of those policies which perpetuate this horrible adventure. Peaceful dissent is evidently the pastime of no single profession, age group, or political party.

Perhaps today is, in part, a test of the democratic ideal—to see whether our government can respond to this great demonstration of national will.

We are still, in fact, wallowing around in a swamp of non-policy, hoping to back into peace just as we backed into war.

We have all disavowed this war, all right. Everyone—the President, the Pentagon, the hawks, the "great middle"—all have disavowed it. We don't like the killing; we don't like the disruption; we all prefer peace.

But too many of our leaders are disavowing the *predicament* and not disavowing the *policy,* which has brought us ten years of war on the Asian mainland and cost this country over 44,000 American dead, a quarter of a million wounded, and cost this state over 800 of her own boys.

Surely tonight it is clear that it is not enough to hope for peace . . . We must relentlessly pursue peace.

It is not enough to say that we have failed in our objective . . . We must openly and frankly admit that our very objectives were in error.

We cannot cling to honor and pride and only hope to bring an end to the war. We must seek peace and only then bring an end to the dishonor and the lost pride which we have already experienced.

Unfortunately, however, we are seeing an old, old movie in this country, sponsored first by a Democratic President and now being re-run by a Republican President.

We have all heard it before: "Things are getting better; infiltration is down; the enemy is demoralized and weakened; Saigon, Thieu, and Ky want only to represent the people of South Vietnam (including, we suppose, the 21,000 political prisoners resting tonight in Vietnamese prisons); U.S. casualties are down; enemy casualties are up; the peace talks could progress if only we had a united front; the South Vietnamese Army—yes, the South Vietnamese Army—is nearly ready to take over."

It is an old movie, but an even earlier version was sponsored by the French. Their famous last words are best represented by the unfortunate prognostication of General Navarre in January of 1954 when he stated clearly: "I fully expect only six months more of hard fighting."

Today we are told the President has a secret plan. And I believe some of us have heard that before. The predicament we are in reminds us of Frost's couplet: "We dance around a ring and suppose. But the secret sits in the middle and knows."

We would like a secret or two from the middle tonight—What is American policy? I don't believe there is anyone in Washington, with the possible exception of the President, who can answer that question. Those who criticize our dissent often appeal to us on the need to present a united front and support our Administration in the difficult pursuit of peace. But I have yet to see a single document or hear a single statement that tells us what that plan or what that course is.

Is it designed to save lives or to save face? Is it designed to end the war or to relieve political pressure at home? Is it a policy which recognizes our errors or one which simply seeks to obscure them? Is it a policy which is to be determined by America or is it one which continues to lock us in the

desires of Hanoi and Saigon? In short, is it a policy to get us out or keep us in Vietnam?

I acknowledge the President's sincere desire for peace. But, we still, after withdrawal of 60,000 troops, will have 484,000 American troops in South Vietnam—only 6,000 less than a year ago.

We are still in full support of a government which has imprisoned 21,000 men and women, political and religious leaders, largely for their political beliefs. I think it is fair to say that those 21,000 Vietnamese in the main did nothing other than what we are doing here tonight.

We still espouse the cause of self-determination in Vietnam, although we know that Thieu and Ky have categorically stated their refusal to acknowledge any free election which gives any recognition to the National Liberation Front. As President Thieu put it, he "would not concede a single hamlet to the other side."

We are told in Washington that our troops have shifted to a defensive strategy, but from Vietnam we hear that we are waging war as usual.

In short, by not setting forth a clear policy which disavows the past and sets a new course for peace, we are clinging to old policies and old myths. It is this admission which we seek from our Administration. It is not their mistake they need admit, it is our mistake and it is my mistake. What we are paying for today is simply a price for pride, and the price is too high for any civilized society to continue to pay.

I have a pride problem of my own. I once supported this war. I thought it was right. I thought many things would happen in Vietnam; a popular non-corrupt government, land reform, a South Vietnamese Army that would fight, and many other things. I found out I was wrong; I admit it; and I think it is time for the U.S. Government to do the same.

I believe our President said this in May, in so many words, when he said there was no longer any hope for military victory in Vietnam. I think that President Johnson also admitted the wrongness of this war—in so many words—when he stopped the bombing of the North and placed a ceiling on our troop commitments.

But "so many words" are not good enough. "No more Vietnam" is not good enough. If we shouldn't have any more Vietnams, let's not have the one on our hands today. I think the time has come to substitute humility and candor—the pride of the strong—for arrogance and self-deceit, which is the pride of the weak.

You don't have to, and none of us need dwell on, the cost of this war: the 44,000 dead; the 250,000 wounded; the 100 billion dollars gone forever at a rate, now, of 30 billion dollars annually; the unprecedented inflation; the highest interest rates in the history of our society; and all the rest. The dollars seem no longer to astound us. The staggering cost is what we have given up elsewhere, and it is exceedingly difficult to try to make specific the cost of the war and the cost of that defense budget.

We spend $21,000 in ammunition alone for each enemy soldier believed to be in Vietnam while the Federal Government spends $44.00 for every child in this country believed to be in our education institutions.

For 1 billion dollars—enough to run the Vietnam war for 10 days—we could provide headstart opportunities for 625,000 children. We could provide job training and supporting services for 500,000 welfare parents. We could expand cancer research five-fold.

For a single billion dollars—10 days of war, we could run MacAlester College, tuition and donation free for 125 years.

But the best is yet to come. If we were bankers and understood the occult art of investing, and were able to find 5% money (which would be hard to find these days because it is 7% and 8%)—but if we could find 5% money, and invested that billion dollars, we could run Hamline, MacAlester, Augsburg, St. Olaf, and Gustavus tuition free forever, and that's a pretty good deal.

Yesterday afternoon, for five hours, Senator Nelson and I led the fight to try to expand the poverty program. We asked for $250 million to keep Headstart with the same number of children that they have today. We asked for a modest amount of increased funds to expand the Legal Services and to keep them independent from those who would like to keep them under control. We proposed expanding money for emergency food and emergency medical care. We proposed a slight expansion of programs designed to help the migrants and farmworkers of this country.

In 20 minutes the opposition mounted and successfully adopted amendments that cut $250 million out of that poverty program in the name of inflation. That was more than we were able to cut out of the $20 billion military authorization budget in 2½ months of fighting on the Senate floor.

What I am saying is this: We have gotten to the point where this war and the cost of the defense budget is taking its greatest toll upon the value system of our country. Where we can justify and support $600,000 to the University of Mississippi to determine how birds can be used in the next war, and cutback on cancer projects throughout this land. Billions more for an indefensible war in Vietnam, while we say we cannot afford the funds to feed the hungry in our own country. Isn't it remarkable that two of our scientists recently received the Nobel Prize for research in biomedicine and shortly thereafter had their Federal research grants reduced because of the war in Vietnam. This system—this system of ignoring the needs of our people—may be one of the great casualties caused by the war in Vietnam.

But there are other costs as well, and perhaps there's one apart from the loss of life which is the greatest cost of all. This is the cynicism, the bitterness and the alienation of the young of this country.

I am deeply disturbed by the thought of a generation which may lose all confidence in the ability of a democracy to respond with justice, reason and humanity. But what can we expect of a generation which is asked to kill and be killed in a war which cannot be explained. Can a fractured, disheartened and demoralized American possibly be a price worth paying for a few more years of an Americanized government in Saigon?

Recently, the Presidents of 76 colleges wrote President Nixon. They said this: "There are times to be silent and there are times to speak. This is the time to speak. The accumulated costs of the Vietnam war are not in men and material alone. There are costs, too, in the effects on the young people's hopes and beliefs. Like ourselves, the vast majority of the students with whom we work still want to believe in a just and honest and sensitive America. But our military engagement in Vietnam now stands as a denial of so much that is best in our society."

The desire to love and respect one's country is one of man's deepest instincts. Yet, equally deep are the beliefs and values about justice, morality, and humanity. And perhaps the greatest crime of this war is that we have forced our young men and women to choose between these two instincts. The great majority of the young will never feel a bullet. Many, in fact, will not have to go even into the Services. But nearly all will be called upon to disavow either their minds, their conscience, or their country. And no civilized, free society should put anybody to that test.

We can feel pride and love for those who must serve. Yet we cannot feel pride for the war itself. We cannot feel that a great purpose will be won. We can only shut our eyes and choose—and we lose either way.

And something must be blamed for this awful choice. It may be the government, the President, the "establishment," the middle class or some other symbol. But something must lose the respect, the love, and the allegiance of those who must choose. And in the end, it is America that loses.

Above all else, a free society must grant its young the might to act in accordance with rational conscience. Above all else, we must end this war and restore this right.

Six years ago, in words that were tragically ignored, President Kennedy told this country of Vietnam; "in the final analysis it is their war; they are the ones who have to win it or to lose it."

I believe the final analysis has come.

DISCRIMINATION AGAINST SOVIET JEWRY

Mr. RIBICOFF. Mr. President, discrimination against Soviet Jewry is an unconscionable act which can no longer be tolerated.

In a stirring appeal to the United Nations Commission on Human Rights on November 10, 18 Jewish families in Soviet Georgia asked this Commission and the world at large to help them in their efforts to emigrate to Israel.

We should applaud the courage and determination of these families. They have bravely brought this issue personally to the world at great risk to themselves. They symbolize the 3½ million Jews living in difficult conditions in the Soviet Union.

For years, the Soviet Government has denied Jewish families their right to join their loved ones in Israel. Then, in January 1969, the Soviet Union signed the Convention for the Liquidation of All Forms of Racial Discrimination. This charter assures every person the right to leave any country, including his own.

Yet the Soviet Union has continued to turn a deaf ear to the pleas of the 18 Jewish Georgians who want to leave for Israel.

It is sad to see the difference between the words and actions of the Soviet Government.

These actions should be condemned. They mock the cherished rights of free emigration and self-determination.

The families involved and the Israeli Government have patiently negotiated this question for months within the Soviet Union.

Persuasion has not worked. The only recourse now is pressure from the world community.

It is my hope that the United States will support the letter sent to the United Nations, and encourage that body through its Commission on Human Rights, to bring the necessary pressure to bear on the Soviet Union to secure the open emigration of Jews to Israel.

For as the appeal has said:

There are 18 of us who signed this letter. But he errs who thinks there are only 18 of us.

I ask unanimous consent to have printed in the RECORD letters to the Human Rights Commission and to the Chairman of the Supreme Soviet of the U.S.S.R. N. V. Podgorny.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AUGUST 6, 1969.

The HUMAN RIGHTS COMMISSION,
United Nations,
New York, U.S.A.:

We, 18 religious Jewish families of Georgia, request you to help us leave for Israel. Each one of us, upon receiving an invitation from a relative in Israel, obtained the necessary questionnaires from the authorized U.S.S.R. agencies, and filled them out. Each was assured orally that no obstacles would be put in the way of his departure. Expecting to receive permission any day, each sold his property and gave up his job. But long months have gone by—years, for many—and permission for departure has not yet been given. We have sent hundreds of letters and telegrams; they have vanished like tears in the sand of the desert. All we hear are one-syllable oral refusals. We see no written replies. No one explains anything. No one cares about our fate.

But we are waiting, for we believe in God.

We 18 religious Jewish families of Georgia consider it necessary to explain why we want to go to Israel.

Everybody knows how justly national policy, the theoretical principles of which were formulated long ago by the founder of the state, V. I. Lenin, is in fact being carried out in the U.S.S.R. There have not been Jewish pogroms, pales or quotas in the country for a long, long time. Jews can walk the streets without fear for their lives; they can live where they wish, hold any position, even as high as the post of minister, as is evident from the example of V. Dymshits, deputy chairman of the U.S.S.R. Council of Ministers. There is even a Jewish deputy in the Supreme Soviet—A. Chakovsky, editor-in-Chief of *Literaturnaya Gazeta.*

Therefore, it is not racial discrimination that compels us to leave the country. Then perhaps it is religious discrimination? But synagogues are permitted in the country, and we are not prohibited from praying at home. However, our prayers are with Israel, for it is written: "If I forget thee, O Jerusalem, may my right hand forget its cunning." For we religious Jews feel that there is no Jew without faith, just as there is no faith without traditions. What, then, is our faith and what are our traditions?

For a long time the Roman legions besieged Jerusalem. But despite the well known horrors of the siege—hunger, lack of water, disease, and much more—the Jews did not renounce their faith and did not surrender. However, man's strength has its limits, too, and in the end barbarians broke into the Holy City. Thus, a thousand years ago, the Holy Temple was destroyed, and with it—the Jewish State. The nation, however, remained. Although the Jews who could bear arms did not surrender to the enemy and killed one another, there remained the wounded, who were bleeding to death; there remained the old people, women and children.

And whoever could not get away was killed on the spot.

But whoever could, went away into the desert; and whoever survived, reached other countries, to believe, and pray, and wait.

Henceforth they had to find a way to live in alien lands among people who hated them. Showered with insults, covered with the mud of slander, despised and persecuted, they earned their daily bread with blood and sweat, and reared their children.

Their hands were calloused, their souls were drenched in blood. But the important thing is that the nation was not destroyed—and what a nation.

The Jews gave the world religion and revolutionaries, philosophers and scholars, wealthy men and wise men, geniuses with the hearts of children, and children with the eyes of old people. There is no field of knowledge, no branch of literature and art, to which Jews have not contributed their share. There is no country which gave Jews shelter which has not been repaid by their labor. And what did the Jews get in return?

When life was bearable for all, the Jews waited fearfully for other times. And when life became bad for all, the Jews knew that their last hour had come, and then they hid or ran away from the country.

And whoever got away, began from the beginning again.

And whoever could not run away, was destroyed.

And whoever hid well, waited until other times came.

Who didn't persecute the Jews! Everybody joined in baiting them.

When untalented generals lost a war, those to blame for the defeat were found at once—Jews. When a political adventurer did not keep the mountain of promises he had given, a reason was found at once—the Jews. Jews died in the torture chambers of the Inquisition in Spain, and in fascist concentration camps in Germany. Anti-Semites raised a scare—in enlightened France it was the Dreyfus case; in illiterate Russia, the Beilis case.

And the Jews had to endure everything.

But there was a way that they could have lived tranquilly, like other peoples; all they had to do was convert to another faith. Some did this—there are cowards everywhere. But millions upon millions preferred a life of suffering and often death to apostasy.

And even if they did wander the earth without shelter—God found a place for all.

And if their ashes are scattered through the world, the memory of them is alive.

Their blood is in our veins, and our tears are their tears.

The prophecy has come true: Israel has risen from the ashes; we have not forgotten Jerusalem, and it needs our hands.

There are 18 of us who signed this letter. But he errs who thinks there are only 18 of us. There could have been many more signatures.

They say there is a total of 12 million Jews in the world. But he errs who believes there are only 12 million of us. For with those who pray for Israel are hundreds of millions who did not live to this day, who were tortured to death, who are no longer here. They march shoulder to shoulder with us, unconquered and immortal, those who handed down to us the traditions of struggle and faith.

That is why we want to go to Israel.

History has entrusted the United Nations with a great mission—to think about people and help them. Therefore, we demand that the U.N. Human Rights Commission do everything it can to obtain from the Soviet Government in the shortest possible time permission for us to leave. It is incomprehensible that in the 20th century people can be prohibited from living where they wish to live. It is strange that it is possible to forget the widely publicized appeals about the right of nations to self-determination—and, of course, the right of the people who comprise the nation. We will wait months and years, we will wait all our lives, if necessary, but we will not renounce our faith or our hopes.

We believe: Our prayers have reached God.

We know: Our appeals will reach people.

For we are asking little—let us go to the land of our forefathers.

SIGNATURES

Elashvili, Shabata Mikhailovich, Kutaisi, 53 Dzhaparidze St.

Elashvili, Mikhail Shabatovich, Kutaisi, 33 Dzhaparidze St.

Elashvili, Izrail Mikhailovich, Kutaisi, 31 Kirov St.

Eluashvili, Yakov Aronovich, Kutaisi, 5 Mayakovsky St.

Khikhinashvili, Mordekh Isakovich, Kutaisi, 19 Makharadze St.

Chikvashvili, Mikhail Samuilovich, Kutaisi, 38 Khakhanashvili St.

Chikvashvili, Moshe Samuilovich, Kutaisi, 32 Tsereteli St.

Beberashvili, Mikhail Rubenovich, Kutaisi, 9 Klara-Tsetkin St.

Elashvili, Yakov Izrailovich, Kutaisi, 54 Tsereteli St.

Mikhelashvili, Khaim Aronovich, Poti, 57 Tskhokaya St.

Mikhailashvili, Albert Khaimovich, Poti, 57 Tskhakaya St.

Mikhelashvili, Aron Khaimovich, Poti, 18 Dzhaparidze St.

Tetruashvili, Khaim Davidovich, Kutaisi, 5 Shaumyan 1st Lane.

Tsitsuashvili, Isro Zakharovich, Kutaisi, 5 Shaumyan 1st Lane.

Tsitsuashvili, Yefrem Isrovich, Kutaisi, 6 Shaumyan 1st Lane.

Yakobishvili, Bension Shalomovich, Tbilisi, 4 General Delivery (formerly lived at 91 Barnov St.).

Batoniashvili, Mikhail Rafaelovich, Kutaisi, 53 Dzhaparidze St.

Tetruashvili, Mikhail Shalomovich, Kulashi, 114 Stalin St.

LENINGRAD.

To the Chairman of the Supreme Soviet of the U.S.S.R., com. Podgorny, N.V.

DEAR NIKOLAY VIKTOROVICH: I hereby apply to you with the request to permit my family to emigrate for permanent residence to Israel, where our relatives reside.

For over two years, in accordance with the established order, we have been requesting the Ministry of Interior of the USSR to give us such a permit, but each time we receive an unmotivated refusal. And this, in spite of the fact that there exists an order of the Praesidium of the Supreme Soviet of the USSR concerning the ratification of the International Convention on the liquidation of all forms of Racial Discrimination, which confirms the right of every person to leave any country, including his own. And this also, in spite of a number of other documents that confirm this right and that have been signed by the Soviet Government.

All my numerous complaints to the abovementioned organs about the contrary to law, negative decision of the Ministry of Interior in connection with my family, do not, as a rule, go further than the reception rooms or the offices of these establishments and—evidently out of a desire to avoid giving an answer to an unpleasant question—are transmitted to the Ministry of Interior of the USSR even when the matter in question has nothing to do with the Ministry of Interior. You can see this from the attached list of our applications to various administrative organs.

My family consists of 4 persons: my wife and I are 40 years old, our daughters are 16 and 10. I am an engineer-metallurgist, my wife is a philologist. We have never been engaged in any confidential work.

L. S. KAMINSKY.

JOSEPH P. KENNEDY

Mr. McGEE. Mr. President, this week we have seen the passing of a truly remarkable American—Joseph P. Kennedy. We in this body, of course, are touched by the death of this man because, though he did not serve in the Senate himself, he has sent three sons to the Senate. All of us, I know, share a bit in the loss felt by Senator KENNEDY, of Massachusetts; the widow, Mrs. Rose Kennedy; and other members of this distinguished family.

If Joe Kennedy's life were to be measured only by the success he achieved in the rearing of his children, in a tradition of public service, this alone would entitled him to great regard. But he did more—much more. In his day, he was a diplomat, an uncommonly successful

businessman, and a Government administrator.

We who have watched Mr. Kennedy through years of triumph, through years of unparalleled tragedy, and through years of ill health have learned to respect him highly for his great example. That respect, that example, will carry on.

OIL IMPORT COST REVEALED

Mr. PROXMIRE. Mr. President, the Office of Emergency Preparedness, the Office charged with overseeing the mandatory oil import program, has finally revealed the true cost of the oil import program.

In my own State of Wisconsin, the oil import quota program costs each man, woman, and child $29.08. This means that the average family of four must pay $116.32 more for driving their car or heating their home than they would if the Federal Government did not intervene in the free market to protect the major oil companies by limiting imports of inexpensive foreign oil. This $116.32 is coming right from the pocket of the average family in Wisconsin and going into the bulging vaults of the major oil companies.

The time has come for Congress and the President to introduce some equity into the system. We can no longer force the average consumers to subsidize the gigantic oil companies with their gigantic profits by paying higher prices and taxes than they should.

In order that every Senator can see how much his constituents are forced to pay in higher oil prices because of the oil import quota program, I ask unanimous consent that the OEP letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF EMERGENCY PREPAREDNESS, EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., November 20, 1969.

Mr. PHILLIP AREEDA,
Executive Director, Cabinet Task Force on Oil Import Control, Washington, D.C.

DEAR MR. AREEDA: At your request, the OEP staff has estimated the 1969 total and per capita consumer cost of oil import control on a State basis. The overall 1969 estimated consumer cost in the OEP staff submission #169 which is in the public record, is distributed on the basis of the combined consumption of motor gasoline and distillate in each State. These State quantities are related to the total consumption of motor gasoline and distillates in District I, II–IV, and District V. The estimated cost of the program in each of these three areas is attributed to each State in proportion to its consumption of gasoline and distillate oil relative to the total gasoline and distillate oil consumption in its area.

Please note that this is an OEP staff item. It was prepared by the staff of the Office of Emergency Preparedness to assist the work of the Task Force. It does not necessarily reflect the views of the Director of that office nor of the office itself.

Sincerely,

EDWARD R. SAUNDERS, Jr.,
Deputy Director,
National Resource Analysis Center.

P.S.—Mr. Homet asked if we had any objection to making the enclosed available for the public record. Although the data developed was primarily for the use of the Task Force, we have no objection to making it available to the public.

TOTAL CONSUMER AND PER CAPITA COSTS IN 1969 OF OIL IMPORT CONTROLS BY STATES AND PAD DISTRICTS [1]

	Demand (thousand barrels)			Costs	
	Gasoline [2]	Distillates [3]	Gasoline and distillates	Total [4] (thousands)	Dollars per capita [5]
District I:					
Connecticut	24,587	21,748	46,335	$95,323	31.79
Delaware	5,660	3,918	9,578	20,426	37.97
District of Columbia	5,367	3,525	8,892	18,157	22.28
Florida	65,442	14,794	80,236	165,680	26.66
Georgia	47,514	12,013	59,527	122,558	26.61
Maine	10,143	10,647	20,790	43,122	44.23
Maryland	32,568	18,754	51,327	104,401	27.54
Massachusetts	44,573	56,315	100,888	206,533	37.50
New Hampshire	7,160	7,106	14,266	29,505	42.09
New Jersey	61,815	60,056	121,871	249,656	35.13
New York	119,693	106,843	226,536	465,267	25.58
North Carolina	50,524	19,944	70,468	145,254	28.40
Pennsylvania	96,044	59,721	155,765	320,013	27.41
Rhode Island	7,398	7,746	15,144	31,774	25.00
South Carolina	25,351	7,788	33,139	68,088	25.79
Vermont	4,529	5,058	9,587	20,426	48.98
Virginia	40,330	22,286	62,616	129,367	27.83
West Virginia	14,991	3,743	18,734	38,583	21.54
District total	663,689	442,010	1,105,699	2,270,000	29.91
District II:					
Illinois	101,227	42,795	144,022	265,271	24.03
Indiana	55,173	27,355	82,528	150,888	29.68
Iowa	34,717	14,172	48,889	90,046	32.81
Kansas	28,198	6,660	34,858	63,276	27.24
Kentucky	30,683	7,304	37,987	70,577	22.02
Michigan	86,861	36,601	123,462	226,332	25.74
Minnesota	40,655	22,233	62,888	114,383	31.49
Missouri	51,206	17,067	68,273	126,551	27.13
Nebraska	18,166	6,487	24,653	46,240	31.30
North Dakota	8,513	6,156	14,669	26,771	42.29
Ohio	99,247	34,025	133,272	245,801	23.16
Oklahoma	29,370	5,173	34,543	63,276	24.92
South Dakota	9,674	3,830	13,504	24,337	36.32
Tennessee	38,315	10,278	48,593	90,046	22.90
Wisconsin	41,770	26,341	68,111	124,117	29.08
District total	673,775	266,477	940,252	1,727,912	26.33
District III:					
Alabama	33,778	6,556	40,334	$73,010	20.41
Arkansas	20,721	4,079	24,800	46,240	23.33
Louisiana	32,398	9,858	42,256	77,878	20.83
Mississippi	22,168	5,097	27,265	51,107	21.60
New Mexico	11,849	4,183	16,032	29,204	28.97
Texas	126,866	24,457	151,323	277,439	25.08
District total	247,780	54,230	302,010	554,878	23.77
District IV:					
Colorado	22,787	5,574	28,361	51,107	25.24
Idaho	8,428	7,748	16,176	29,204	41.60
Montana	8,596	4,119	12,715	24,337	34.76
Utah	10,737	4,750	15,487	29,204	27.86
Wyoming	5,278	5,153	10,431	19,469	62.00
District total	55,826	27,344	83,170	153,322	32.01
Districts II–IV total	977,381	348,051	1,325,432	2,434,000	25.88
District V:					
Alaska	1,855	4,757	6,612	9,985	35.54
Arizona	17,932	4,599	22,531	34,391	20.13
California	196,349	38,519	234,868	355,560	18.01
Hawaii	4,812	1,381	6,193	9,430	12.16
Nevada	6,422	2,693	9,115	13,867	29.82
Oregon	22,471	13,298	35,769	54,360	26.61
Washington	33,445	17,792	51,237	77,657	24.35
District total	283,286	83,039	366,325	555,000	19.69
Total United States	1,926,188	873,100	2,799,288	5,258,000	26.16

[1] Petroleum Administration for Defense Districts.
[2] Motor gasoline consumption from API Weekly Statistical Bulletin Apr. 11, 1969, p. 7.
[3] Bureau of Mines, Mineral Industry Surveys, "Fuel Oil Shipments, Annual."
[4] Consumer costs for district I, districts II–IV and V from OEP staff submission to Cabinet Task Force on Oil Import Control Costs in each State assumed to be indicated by the sum of gasoline and distillates "consumed" in each State in 1968 in relation to the consumption of these products within its group by districts.
[5] Department of Commerce estimated 1969 population used to derive a per capita cost.

RETIREES DEVELOP A PROGRAM TO PROVIDE A NEEDED SERVICE FOR THE ELDERLY

Mr. WILLIAMS of New Jersey. Mr. President, many elderly individuals want and need to continue working after retirement. For a large number, this is not necessarily a financial need, but an emotional one. Such persons are happy to volunteer their services to aid others. When these services are utilized, the accumulated wisdom and experience of the elderly volunteers prove more than beneficial to all concerned. In fact, there is recent evidence which supports my conviction that certain services can best be provided by the elderly.

I am especially proud to share this evidence with my colleagues today, because an excellent example of volunteer services was developed by an elderly part-time employee of the Committee on Aging. Mr. Ira C. Funston was formerly an attorney with the Department of Labor and his knowledge and experience is now proving to be an asset to the committee, where he works 2 days a week.

Last year, Mr. Funston developed a program which not only utilized his

skills—and those of a number of other retirees—but brought needed help to other elderly persons. The program, developed with the Internal Revenue Service, has proved so successful that it will be put into effect on a national basis in January 1970.

In a recent Associated Press column, "Security for You," Martin Segal explained the program in some detail. I ask unanimous consent that Mr. Segal's column, entitled "Tax Help Due for Elderly," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SECURITY FOR YOU—TAX HELP DUE FOR ELDERLY

(By Martin E. Segal)

Because of the number of special provisions affecting them, older taxpayers sometimes are confused when it comes to filing their tax returns. Often they pay more taxes than they should, and for those who have low incomes, this is a weighty burden.

Help is on the way for the older taxpayer. A plan on the drawing boards would make it possible for elderly persons with low incomes to obtain assistance in preparing their returns at places and under circumstances which would enable them to take advantage of the service offered.

The program stems from a 1969 experiment in which more than 70 people got help in preparing their income tax returns from four volunteers ranging in age from 65 to 85. These volunteers were trained by Internal Revenue Personnel.

C. Ira Funston, formerly an attorney with the Department of Labor and now in private practice, came up with the idea for the program. Funston, who is now working part-time on the staff of the Senate Special Committee on Aging, was encouraged to follow up the concept with the Washington, D.C. Interdepartmental Committee on Aging.

MOST HAD PAID TOO MUCH

Funston was joined by Floyd McNaughton, formerly with the Census Bureau and a professor of economics at the University of Maryland; Chester Leich, formerly with the Coast and Geodetic Survey; and Kingston Bowman, formerly employed an an engineer with the Navy Bureau of Yards and Docks. The Internal Revenue Service agreed to train them.

The 73 persons who were helped were badly in need of such assistance. It was interesting to note that most of them had been paying more taxes than had been required.

For example, a widow over 65 with a civil service annuity of $2,500 had been paying a tax of $128 as indicated by the tax tables—without realizing that she was entitled to a retirement income credit against the tax which completely eliminated it. She not only had no tax to pay for the year but was entitled to a refund for the two prior years. The application for such refund was prepared for her and the money had been received.

TO START IN 1970

Many similar examples could be cited. There were even persons who did not realize that they were entitled to an additional exemption when they became 65 years of age.

Interest has since been expressed by many other persons who wish to enlist in this worthwhile activity during the next tax season. It should be the fore-runner of other programs in which elderly people may enjoy activities designed to help other elderly people who need assistance.

The program was sponsored by the Senate Special Committee on Aging. The plan is to put the program into effect on a national basis in January 1970. The Internal Revenue Service has expressed its willingness to train the volunteers and continue its cooperation.

Further information is available from C. Ira Funston, Room 233G, Senate Office Building, Washington, D.C. 20001.

THE KATHERINE HAMILTON VOLUNTEER OF THE YEAR AWARD

Mr. BAYH. Mr. President, this week a unique individual is being honored by the National Association for Mental Health which is currently holding its annual meeting in Washington.

Mrs. Mack Bright, of Blackfoot, Idaho, will be the recipient of the Katherine Hamilton Volunteer of the Year Award—the highest honor bestowed upon a volunteer for efforts on behalf of the mentally ill.

This award, which has been presented annually since 1964 by the Indiana Mental Health Memorial Foundation, is named in honor of one of my former constituents from Terre Haute, Ind.

Katy Hamilton dedicated 33 years of her life to the mentally ill. She helped to organize and promote the growth of the Vigo County chapter, served the mental health association in Indiana for 10 years as a board member, was secretary and delegate to the National Association for Mental Health, contributed to eliminating the practice of patient jailings in her home county, and helped to establish psychiatric clinics and the "adopt-a-patient program" in which other persons assume the role of relative to a patient. She also assisted in the development of hospital volunteers in Indiana, lobbied for increased appropriations for the department for mental health, and helped expand the National Association for Mental Health.

The award was made possible through the generosity of Miss Hamilton bequeathing the bulk of her estate to the Indiana Mental Health Association and to the Vigo County chapter. This enabled the association to form the Indiana Mental Health Memorial Foundation, which is dedicated to undertake, promote, and develop research, education, and other services related to the field of mental health.

The Vigo County chapter used its share of the Hamilton estate to help to provide local funds for the Community Comprehensive Mental Health Center which will be named in her honor. The Katherine Hamilton Comprehensive Mental Center will be the first free-standing center constructed in Indiana.

The future of the Katherine Hamilton center and other such institutions, as well as all the patients they will serve, will in part depend on both the State and National Governments assuming some of the financial burden incurred for operating and maintenance costs. I trust that in the next few months Congress will give serious attention to bills now pending that would expand the matching grant system to include substantial funding for this and other similar new local mental centers.

ENVIRONMENTAL QUALITY: PESTICIDES AND THE RESTRICTION OF DDT

Mr. TYDINGS. Mr. President, the Senate today takes one of its most important and controversial steps in deciding whether to confirm a nominee to the highest court in the land. Yet I hope this momentous vote will not overshadow a far-reaching decision announced yesterday by the Secretary of Agriculture.

Secretary Hardin declared that nearly all uses of DDT are to be prohibited by December 31, 1970. Uses deemed essential by the Secretary will be permitted to continue. The ban will affect some 14 million pounds of the pesticide or 35 percent of the total domestic use of DDT.

The Secretary's action follows the recommendation by HEW Secretary Robert Finch that the pesticides use be restricted within 2 years. Both Secretaries are to be commended for their action, and I wish to acknowledge and thank Dr. Emil Mrak, former chancellor of the University of California at Davis, for the leadership he provided the Health, Education, and Welfare Commission on Pesticides.

As a Senator who has introduced wide-ranging legislation on pesticides, I believe Secretary Hardin's decision to be an important one. The quality of our environment has declined significantly, and the indiscriminate use of persistent pesticides has contributed substantially to the deterioration. The restriction on DDT is a step, and an important one, to restore this quality.

It is equally important for it demonstrates that our institutions of government can be responsive to a concerned and active citizenry. The campaign to ban DDT has gone on for some time now. Secretary Hardin's action is a direct result of this effort. The symbolic nature of the Secretary's decision should thus not be forgotten.

I call the attention of my colleagues to this restriction on the use of DDT. I urge the Departments of Agriculture, the Interior, and HEW to increase its scope quickly by using immediately nonpersistent alternates now available and accelerating the research for additional substitutes. Finally, I call for appropriate action to limit the use of other hard pesticides such as dieldrin and endrin so that these poisons no longer endanger our environment.

Mr. President, I now ask unanimous consent that two articles from today's Washington Post and Baltimore Sun announcing the restrictions on DDT be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 21, 1969]

UNITED STATES PROHIBITS ONE-THIRD OF ALL DDT USE

The Nixon administration yesterday took its first major step to bar the use of the pesticide DDT on farms and gardens and said an almost complete ban would be in effect by the end of next year.

Following a meeting of the President's Environmental Quality Council at the White House, with Mr. Nixon presiding, it was announced that Secretary of Agriculture Clifford M. Hardin had ordered cancellation within 30 days of the use of DDT on shade tree pests, pests in water areas, house and garden pests and tobacco pests.

Some 14 million pounds, or 35 per cent of the total amount of DDT annually used in this country, is manufactured for these purposes.

In addition, Hardin announced his inten-

tion to cancel "all other DDT uses" and asked for comment from the industry within 90 days.

Exceptions will be made where DDT is needed for prevention or control of human disease or other essential uses for which no alternative is available," he said.

Action on this order will be completed by the end of next year, Hardin said.

Beginning in March, action regarding other persistent pesticides will be taken, using the same criteria and procedures being applied to DDT," Hardin announced.

Last week, the administration announced that it intended to phase out most domestic uses of DDT over the next two years.

Hardin also turned over to the Department of Health, Education and Welfare responsibility for determining "public health aspects of all pesticide registrations."

The Environmental Quality Council said it would establish a committee on pesticides under Harden's chairmanship to coordinate programs and develop policy.

[From the Baltimore Sun, Nov. 21, 1969]

UNITED STATES ORDERS DDT CURBS—PROHIBITION OF MOST USES PLANNED BY DECEMBER 31, 1970

WASHINGTON, November 20.—Clifford M. Hardin, Secretary of Agriculture, announced today his intention to outlaw nearly all uses of DDT by December 31, 1970, and to prohibit within 30 days use of the controversial pesticide to kill insects infesting homes, shade trees, aquatic areas, gardens and tobacco fields.

Mr. Hardin's action cuts in half the proposal of Robert H. Finch, Secretary of Health, Education and Welfare, that DDT be outlawed for interstate sale or shipment in two years. Mr. Finch called for a two-year phaseout about two weeks ago.

The ban, based on the possible harmful effects of use of this pesticide, involves some 14 million pounds or about 35 per cent of the total DDT used in this country.

After meeting with President Nixon, the Environmental Quality Council also announced its intention to cancel all other use of DDT, except for emergency control of diseases and massive crop-pest infestations, by December 31, 1970.

It called for comment within 90 days on this intention.

Exceptions would be made in the area of public health and for other essential uses for which no alternative is available.

Beginning in March, similar action will be taken in a review of other persistent pesticides.

Dr. Lee DuBridge, executive secretary of the council and Mr. Nixon's science adviser, along with Mr. Hardin and Mr. Finch, joined in the announcement today at the White House.

Mr. Finch said: "We have no proof that DDT is in fact carcinogenic," or cancer-causing in humans. He said a report of the commission on pesticides recognized the fact that there was some evidence of its being carcinogenic in animals.

UNITED STATES TO REVIEW PESTICIDE AID

WASHINGTON, November 20.—The United States will make a prompt review of foreign-aid programs involving the use of pesticides following the recent decision to phase out the use of DDT, the White House announced today.

The review will be made by the United States Agency for International Development in collaboration with the aid-receiving countries.

MR. AGNEW: NO LONGER A LAUGHING MATTER

Mr. GURNEY. Mr. President, in recent weeks, the Washington Post, in its usual self-righteous fashion, has been lecturing the public on the right of dissent. Everyone in the eyes of the Washington Post has a natural and innate right to dissent from establishment notions, everyone Mr. President, with the exception of the Vice President of the United States, the Honorable SPIRO T. AGNEW.

In its editorials, news columns and in its editorial page comments beginning on Friday, November 19, 1969, the Post has let it be known that it is distressed concerning the Vice President's remarks in Des Moines. It sees in the Vice President's remarks, Mr. President, the ominous threat of television censorship. It would appear that as a multiple owner of television and radio licenses, the Washington Post-Newsweek Corp., has a particular concern in this area.

I must point out, however, that the Washington Post is apparently not opposed to censorship and the suppression of ideas as a matter of principle. There are times, Mr. President, when the Post feels that certain ideas should be suppressed and certain spokesmen should be "silenced." In this context, I refer to an editorial which appeared in the Washington Post on October 21, 1969, again concerning Vice President AGNEW.

I ask unanimous consent that this document be inserted in the RECORD. The article indicates, I think, the abiding interest of the Washington Post in the free and unfettered expression of opinions on controversial issues, providing, of course, the Post approves the views expressed and person expressing them.

The last sentence of the editorial reads:

If Mr. Nixon wishes to be in any way convincing in this matter or to preserve the notion that he is acting in good faith, then he must repudiate the excesses of his Vice President or silence him or—ideally—do both.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

MR. AGNEW: NO LONGER A LAUGHING MATTER

By writ and by tradition the vice-presidency is an office in which there is practically nothing to do. The trick of course lies in doing it well—in standing back and learning, in readying oneself for any emergency, in supporting the President backstairs where one can and in doing nothing that goes against his interest. Clearly, then, in the case of Vice President Agnew we are faced with one or two possibilities. One is that Mr. Agnew with his ten-month roadshow of gaffes, goofs, and raw demagoguery hasn't caught on to his job. The other is that he has—that Mr. Nixon is authorizing and/or approving the Vice President's public dicta as part of some elaborate (and foredoomed) political game. Neither is particularly reassuring, but if the latter is the case, we should be told.

In New Orleans on Sunday the Vice President made this necessary with his comments on the war and on the motivations of those involved in last week's Vietnam moratorium:

"If the moratorium had any use whatever, it served as an emotional purgative for those who feel the need to cleanse themselves of their lack of ability to offer a constructive solution to the problem."

And again:

"A spirit of national masochism prevails, encouraged by an effete corps of impudent snobs who characterize themselves as intellectuals. It is in this setting of dangerous oversimplification that the war in Vietnam achieves its greatest distortion."

And again:

"Great patriots of past generations would find it difficult to believe that Americans would ever doubt the validity of America's resolve to protect free men from totalitarian attack. Yet today we see those among us who prefer to side with an enemy aggressor rather than stand by this free nation."

Mr. Agnew also let it be known that those who participated in the moratorium were guilty of the crime of supporting "a massive public outpouring of sentiment against the foreign policy of the President of the United States" and of not caring to "disassociate themselves from the objective enunciated by the enemy in Hanoi."

Now what is interesting in all this is certainly not the Vice President's line of thought or his ham-handed effort to discredit the motivation and question the loyalty of a large and respectable part of the political community: we have seen and heard all that before. It is not even to the main point to observe that Mr. Agnew has outdone himself in assuring the hostility of a part of the electorate Mr. Nixon has some interest in calming down. Nor does the subject upon which Mr. Agnew chose to discourse with such vehemence permit his remarks to be received with the national giggle they so frequently inspire. This time around the only question worth asking is what the President thought of what Mr. Agnew said.

Mr. Nixon is engaged in a highly chancy and complicated maneuver to end the war in Vietnam in a way which will not do utter violence to this country's interests abroad and which will not result in a terrible rending of the social fabric at home—in a right-to-middle uprising based on charges of betrayal and sell-out. At least that is what you can hear any day of the week from those behind the scenes in his administration who argue the case for his method of disengagement and who beg understanding of it. Simultaneously we witness Vice President Agnew out fomenting precisely the kinds of emotions others in the White House profess to fear and claim their strategy is designed in large measure to avoid. It really will not do for Mr. Ziegler, the White House spokesman, merely to indicate that vice presidential speeches for party gatherings are not cleared in advance by the White House. If Mr. Nixon wishes to be in any way convincing in this matter or to preserve the notion that he is acting in good faith, then he must repudiate the excesses of his Vice President or silence him or—ideally—do both.

ARMED SERVICES COMMITTEE SHOULD INVESTIGATE ALLEGED U.S. INVOLVEMENT IN DEATHS OF VIETNAMESE CIVILIANS

Mr. GOODELL. Mr. President, in recent days the American and foreign news media have carried numerous reports concerning the alleged massacre of a large number of Vietnamese civilians by American military personnel in Vietnam.

The New York Times this morning quoted British Prime Minister Harold Wilson as saying that if the reports proved "one-quarter true, they would be regarded as very grave atrocities."

Yesterday, in a letter to the distinguished chairman of the Senate Armed Services Committee (Mr. STENNIS), I requested that the committee initiate a full-scale investigation concerning these alleged killings and the operation of the Phoenix program—an alleged United States-Saigon program for assassinating supposed NLF village officials.

Mr. President, these charges raise grave moral questions concerning the conduct of our troops and the integrity of our country. They must be thoroughly

and impartially investigated at the earliest opportunity.

I ask the support of every Member of Congress in seeking early resolution of these charges.

Mr. President, I ask unanimous consent that the text of my letter of yesterday to the Senate Armed Services Committee be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NOVEMBER 20, 1969.

Hon. JOHN C. STENNIS,
Chairman, Senate Armed Services Committee, Washington, D.C.

DEAR MR. CHAIRMAN: On August 13 of this year, Senator Cranston and I spoke out against the mistreatment of American prisoners of war by North Vietnam and the NLF. In a statement in which we were joined by 39 other Senators, we called upon our adversaries in Vietnam to observe certain minimum standards of humanity in the treatment of our prisoners.

If we, as members of Congress, are concerned with the treatment of our fighting men by the enemy, we should be equally concerned that our military forces in Vietnam maintain the standards of a civilized nation at war.

Last week, eye witnesses quoted in the news media reported the alleged massacre of a large number of Vietnamese civilians by American military personnel in an offensive in the Quangnai City area of Vietnam last year.

These eyewitnesses describe instances of premeditated killings of unarmed Vietnamese villagers, mostly women and children, by American soldiers. The estimates of the number killed range from 90 to over 500, the latter figure being cited by Vietnamese survivors.

Even more shocking, these witnesses report that a large part of a company of American troops participated in the shootings; that the killings were committed at the instruction of certain officers and non-commissioned officers; and that at least one of the witnesses was warned by his military superiors not to report the occurrence.

I understand that the Army is currently investigating the incident.

I am equally concerned with the report concerning the operation of the joint U.S.-Saigon "Phoenix" program for assassinating supposed NLF village officials. Saigon radio allegedly reported that by December 31, 1968—one year after its inception—this program had caused the death of 18,393 persons.

In his November 3rd speech, the President expressed his deep concern that a collapse of the South Vietnamese government might result in a "bloodbath"—in slaughter of innocent Vietnamese civilians by Communist forces. He indicated that his apprehension over such a possibility has to a considerable degree influenced his Vietnam policy.

If American policy in Vietnam is so deeply concerned with the possibility of a "bloodbath" perpetrated by Communist forces, it should be equally concerned with preventing the deliberate killing of civilians by our own or South Vietnamese forces.

Such barbarous treatment of Vietnamese civilians can totally destroy any credibility the United States can claim to have for its presence in Vietnam.

I therefore respectfully request that the Senate Armed Services Committee initiate a full-scale investigation concerning alleged killings of South Vietnamese civilians by American troops; and concerning the operation of the "Phoenix" program. I request that your investigation include a review of what steps, if any, have been undertaken by the Department of Defense and the American military command in Vietnam to prevent killings of this nature in the future.

Sincerely,

CHARLES E. GOODELL.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is concluded.

Under the previous order, the Senate is in executive session, with the time equally divided.

SUPREME COURT OF THE UNITED STATES

The Senate, in executive session, resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. MANSFIELD. Mr. President, on this side, under the unanimous-consent agreement, I yield all the time except one-half minute to the distinguished Senator from Indiana (Mr. BAYH), and that one-half minute I will yield to the distinguished Senator from West Virginia (Mr. BYRD).

Mr. BYRD of West Virginia. Mr. President, in the interest of decorum, I ask that the Chair instruct the Sergeant at Arms that the floor be cleared of all staff personnel and the lobbies be cleared of all staff personnel until the vote on the Haynsworth nomination has been completed, with the exception of those staff personnel who are immediately needed by their respective Senators in connection with the Haynsworth nomination.

The PRESIDING OFFICER. The Sergeant-at-Arms is so instructed.

Mr. BAYH. Mr. President, I yield to the distinguished Senator from Maine (Mr. MUSKIE) such time as he feels he requires to cover the subject he addresses himself to.

Mr. MUSKIE. I thank the Senator from Indiana.

Mr. President, any Presidential nomination subject to the advice and consent of the Senate is a serious matter.

Any President, in the discharge of his constitutional responsibility to make such nominations, is entitled to the consideration of his selections on their merits.

His nominees, whose qualifications are in issue, are entitled to the fair and balanced judgment of the Senate.

The integrity of the political institutions involved—and the confidence of our citizens in their effectiveness and evenhandedness—must also be considered.

In appointments such as those to his Cabinet, the President is rarely denied confirmation of his choices. He is given wide latitude to implement his mandate at the polls by subordinates of his choosing, and his and their performance is subject to the approval or disapproval of the voters at the polls. Moreover, their tenure is limited, and their decisions and official actions are subject to legislative oversight.

Appointments to the Supreme Court of the United States, on the other hand, have been traditionally regarded as imposing a different and more independent kind of responsibility upon the Senate. The Senate, for example, has failed to confirm one-sixth of all nominations to the Court.

Supreme Court Justices are appointed for life. Their tenure may extend over decades, and their decisions and opinions can have a profound impact upon public policy and the direction of our national life for years to come. Their performance is not subject to the approval or disapproval of the electorate. Their decisions and official actions are not subject to legislative oversight.

In the light of these considerations, no Senator, I am sure, has taken lightly the responsibility of casting his vote on the appointment pending before us.

Clearly, men of good will, and integrity, and judgment, in and outside the Senate, have endorsed this appointment. Others, of equal good will, and integrity, and judgment have expressed opposition to it.

They have divided upon three questions:

First. Has the nominee, in the conduct of his personal business and financial affairs, been sufficiently sensitive to their implications relative to his responsibilities as a judge of the U.S. circuit court of appeals?

Second. Has the nominee, in the cases which have come before his court, been sufficiently sensitive to the need for meaningful implementation of the civil rights of all citizens?

Third. Has the nominee, in the cases which have come before his court, been evenhanded in his labor-management decisions?

I am most troubled by the first question. I am not persuaded that Judge Haynsworth is a dishonest man. His actions, however, raise serious questions about his sense of priorities and his sensitivity to judicial ethics which require a judge to avoid even the appearance of private gain through a public action.

From 1950 until March 1964, Judge Haynsworth was a one-seventh owner and a director of Carolina Vend-A-Matic, a lessor of vending machines. He had founded the corporation along with six other individuals, three of whom were his law partners and one of whom was a business associate. He served as its first vice president, and his wife was the corporation's secretary. As late as 1963, Judge Haynsworth remained as a trustee of the company's profit-sharing and retirement plan and attended weekly directors' meetings, for which his annual fee was as high as $2,600.

Since 1958 the company had done a substantial amount of business with mills controlled by the Deering-Milliken Co. Gross annual earnings from Vend-A-Matic's contracts with those mills totaled nearly $50,000 as of June 1963. In August of 1963, new contracts with other such mills increased those gross earnings to $100,000 per year.

Despite those connections, Judge Haynsworth sat, heard, and wrote the opinion in the preliminary phase of major labor litigation involving Deering-

Milliken in 1961. In June of 1963, heard the case on the merits as a member of the court of appeals and joined the 3 to 2 majority ruling in favor of Deering-Milliken. Moreover, the lawyers who argued the case for Deering-Milliken in 1963 were directors in the North Carolina subsidiary of Vend-A-Matic until they resigned on June 12, 1963—the day before the oral argument before Judge Haynsworth's court on June 13, 1963.

Judge Haynsworth not only failed to disqualify himself in the case, he also failed to disclose that one of the litigants was a major customer of a closely held corporation of which he was a founder, director, and officer—a corporation in which he sold his interest in April 1964 for almost $450,000.

In 1968 Judge Haynsworth purchased 1,000 shares of Brunswick Corp. while it was a litigant in a case before him. The Department of Justice has raised only the most questionable defense for this stock purchase: that the case had been decided even though the opinion had yet to be issued. This action raises serious questions about Judge Haynsworth's sense of priorities and his sensitivity to judicial ethics which require a judge to avoid even the appearance of private gain through a public action.

What emerges from the evidence is the picture, not of a dishonest judge, but of a man who has exhibited a marked insensitivity to situations involving conflict of interest risks. Today, public confidence in our institutions requires more than this.

As the Supreme Court said in the Murchison case in 1955:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the *probability* of unfairness.

The Court added:

> To perform its high function in the best way, justice must satisfy the *appearance* of justice.

On this first question, therefore, I regretfully conclude that I cannot vote to confirm the nomination of Judge Haynsworth.

In addition, however, I wish to record my concern over the implications of his opinions in the field of civil rights if his nomination is confirmed.

It has taken us over 100 years to shape public policy so that it moves in the direction of equal rights for all our citizens. In recent years Congress has enacted legislation to halt discrimination in education, public facilities, employment, housing, and voting. The Supreme Court has played an indispensable role in interpreting these acts, in insisting on an end to segregated schooling, and in insuring equal representation of voters. At long last, we stand on the brink of meaningful implementation of these rights.

It is the prerogative of the President, of course, to try to shift the direction and the thrust of the Court's opinions in this field by his appointments to the Court. It is my prerogative and my responsibility to disagree with him when I believe, as I do, that such a change would not be in our country's best interests.

Today, in my judgment, a Supreme Court Justice must be fully sensitive to the efforts of all Americans to participate fully in our society. He must consider, with understanding and compassion, cases which are enmeshed in the most perplexing social problems besetting our Nation.

Judge Haynsworth's record does not evidence the sensitivity and understanding that this task demands.

In 1962 Judge Haynsworth supported—in a dissenting opinion—a plan which avoided all but token changes in the segregated school system. This was a full 8 years after the Brown decision.

In 1963 Judge Haynsworth condoned further procedural delays for the black citizens of Prince Edward County, Va., who had been litigating, since 1951, to obtain education on a nonracial basis. These were the very same citizens whose rights were decided in the Brown case. Yet 9 years later, they found themselves in appellate courts still seeking to enforce that decision.

In 1956 they had defeated the Virginia Legislature's attempt to deny State funds to nonsegregated schools. In 1959 they had found the doors again slammed shut when the county closed all public schools and soon afterward initiated tuition subsidies and tax deductions to support segregated private schools. Finally, they won an injunction against the scheme from the Federal district court.

But on appeal in 1963, Judge Haynsworth reversed this injunction. While black children remained without formal education for their fifth year. Judge Haynsworth ruled that the constitutionality of the whole system depended upon how the State courts would decide subsidiary issues. The plaintiffs, in effect, were told to litigate again in the State courts, a right the Supreme Court had recognized 9 years previously. Fortunately, the Supreme Court overruled Judge Haynsworth and unanimously held the scheme a patently unconstitutional attempt to perpetuate segregated education.

Even in 1967 Judge Haynsworth was allowing perpetuation of segregated school systems by condoning further procedural delays. Again the Supreme Court overruled Judge Haynsworth.

In the complex area of school desegregation, opponents of equal rights have used procedural devices to achieve further delay. Judge Haynsworth, even though bound to follow the Constitution as interpreted by the Supreme Court, has too often sought out such grounds. His addition to the Court would not only have an impact on the Court's future decisions in this area, but would, I am afraid, further encourage those resisting meaningful desegregation.

On the third question which has been raised, there are environments which remain hostile to the rights of workers to organize; there remain significant issues which involve efforts to improve the conditions of the working man or his progress to find a better life.

These questions demand a careful understanding of the problems of labor and management alike. Judge Haynsworth's treatment of these issues does not appear to be consistent with that requirement.

In my consideration of an appointment to the Supreme Court, I do not expect the nominee's philosophical and political views to be carbon copies of my own. I recognize that, in the course of events, in a pluralistic society, the philosophical and political complexion of the Court will and should be responsive to the society which it serves.

And so I have voted to confirm judges, most recently the present Chief Justice of the Supreme Court, whose views appeared to differ from my own.

I am most concerned in the present case with the question of sensitivity to ethical questions and the need to strengthen public confidence in the Court.

Therefore, Mr. President, I shall vote against confirmation.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, on behalf of the minority leader, I announce that the time allocated to him is yielded to the ranking minority member of the Committee on the Judiciary, the Senator from Nebraska (Mr. HRUSKA).

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. I thank the Senator from Michigan. I yield such time as he may require to the junior Senator from Kentucky (Mr. COOK).

Mr. COOK. Mr. President, the Washington Post, in an editorial published this morning, November 21, 1969, concluded that the nomination of Judge Clement Haynsworth should be confirmed. Even though this newspaper has been unenthusiastic about the appointment it decided, as many of us have, that the only relevant inquiry by the Senate was the question of qualifications.

The Post concluded of the ethical questions which have been raised that:

> We do not find them of so serious a nature as to require the rejection of his nomination by the Senate.

Mr. President, this is a reasonable editorial by an organization which would have preferred another nominee, it has nevertheless reached the proper conclusion in regard to what the decision of the Senate should be on this nomination. That decision should be confirmation. I ask unanimous consent that the editorial be printed in the RECORD at this point.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 21, 1969]

THE VOTE ON JUDGE HAYNSWORTH

The long debate that has swirled around the nomination of Clement F. Haynsworth Jr. to the Supreme Court has taken a heavy toll in terms of the judge's reputation, the President's relations with the Senate, the Attorney General's acumen, and, indeed, the Senate's ability to give a controversial nomination the thoughtful, nonpolitical consideration it deserves. It has also taken a toll in terms of the Supreme Court itself since once the rhetoric is stripped away the fight comes to a political struggle in which the President and his men have trotted out all their weapons on one side and the labor and

civil rights groups have trotted out all theirs on the other.

It is too bad that the nomination has been put through so rough a wringer. We said, when it was made, that it was not one of the President's most brilliant acts. In making it, Mr. Nixon did not meet the standards he had set for himself nor the standards we would like to see Presidents use in selecting men to sit on the Supreme Court. Nor did he choose, as we once suggested, to withdraw the nomination when it became clear that almost half, if not more than half, of the Senate would vote to reject it. Such a withdrawal would have been the best course for Mr. Nixon and for the court. It would have saved the President from having to spend so much of his meager political capital—badly needed for better causes—on a mediocre nominee. It would have saved the court the possible embarrassment of receiving a member repudiated by almost a majority of the Senate.

Setting what might have been aside, however, the issue before the Senate today is whether to confirm or reject the nomination. For conscientious members of the Senate, this would be a difficult question even without the political stakes riding on this one vote. There are three substantive questions, one of ethics, one of political views, and one of general qualifications.

The ethical questions raised about Judge Haynsworth's actions are, as some of his critics have said, matters more of sensitivity than of honesty. We do not find them of so serious a nature as to require the rejection of his nomination by the Senate. If it had not been for the Fortas case, we suspect these questions would not have been raised at all. There is a clear inconsistency in the action of senators who defended their opposition to Mr. Fortas on ethical grounds and who now support Judge Haynsworth. There is also an inconsistency in the actions of those who discounted ethical questions in the Fortas case and now weigh them heavily.

As far as the judge's qualifications and points of view go, honest men can differ. As we have said before, his name is not on our list of the most distinguished and able judges and lawyers in the country. In a perfect world, no doubt, the President would pick and the Senate would confirm for the Supreme Court only men who had demonstrated that they stood at the very peak of their profession. But no President has ever followed such a standard and the Senate has never required that. On the views a nominee holds on controversial issues, we think the standard the Senate should apply is whether his position is so unreasonable as to be doctrinaire. While we do not agree with all the views Judge Haynsworth has expressed from the bench, particularly in the area of civil rights, we do not think his position is that unreasonable, although we recognize that there are many senators and others who honestly do.

There is one last argument to be disposed of. It is whether the failure of Judge Haynsworth to request that his name be withdrawn, or the failure of Mr. Nixon to withdraw it, demonstrates a lack of respect for the court as an institution that is, in itself, disqualifying. We feared that by pressing this nomination to a vote, the President would help make the court even more of a political football in the minds of the public than it was. That damage has already occurred, whether or not Judge Haynsworth is confirmed. The politics that has been played and the intensive lobbying that has taken place on both sides has made the political nature of this vote perfectly clear.

And so, it is not a happy choice. Still, reluctantly, we think the Senate should confirm the nomination. There are many other men whose names we would prefer to see go before the Senate today, conservatives as well as liberals. But the right to put a name in nomination is given by the Constitution to the President. The Senate should not be in the position of asking whether the President could have chosen more wisely than he did but whether the man he picked is qualified to serve. Nothing in the record, despite the long weeks of investigation and debate, has convinced us that Haynsworth is not qualified by the standards that have been applied to these nominations in the past. And we can not find justification in the Haynsworth case for an arbitrary change in these standards by the Senate. The change, the upgrading of standards, can more effectively be made where the nominating process begins—with the President.

Mr. COOK. Mr. President, there was some discussion late yesterday that during the debates on this nomination there had been no discussion, or at least very little discussion, in regard to litigants. I question that statement, purely and simply because there has been what I consider a great deal of discussion in that regard.

First of all, there has been much discussion in regard to Judge Haynsworth's position on expanding and modernizing many of the theories with reference to habeas corpus. I suggest that the record shows a very interesting letter written by a professor at Notre Dame University Law School to the Senator from Indiana (Mr. HARTKE), in which the professor—Bernard Ward—said that one of the things that was, to his mind, an outstanding trait of Judge Haynsworth was that he probably spent more time on prisoner petition cases in his court than any other judge in the United States, and that there were more prisoner petition requests filed in the fourth circuit than in any other circuit in the country.

So when we discuss the matter of Judge Haynsworth's attitude toward litigants, I think the record is clear that at least, as Professor Ward put it, one group of people knew they could rely on Judge Haynsworth, and knew they could rely on him as a man who would spend more time in their behalf, apparently, than any other judge in the country. The petitioning prisoners, who had already been convicted and had already served time in prison, and felt that, for some reason or by some stretch of the imagination, through their own efforts their cases should be considered on appeal from their convictions were always heard by Clement Haynsworth.

I make this statement of the record merely because I think it may, in a way, help to clarify the discussions yesterday, wherein it was stated that there had been very little discussion relative to Judge Haynsworth's attitude toward litigants.

I yield the floor.

The PRESIDING OFFICER (Mr. YOUNG of Ohio in the chair). Who yields time?

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair inquires of the Senator whether he intends that the time for the quorum call be taken out of the proponents' time.

Mr. HRUSKA. Yes.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. ALLOTT. Mr. President, in these closing hours of the debate on the confirmation of the nomination of Judge Haynsworth to be an Associate Justice of the Supreme Court of the United States, there is no Senator who is not fully cognizant of the responsibilities that rest on us.

I have searched and studied the record. I have paid assiduous attention to the debate on the floor. There are two or three things in these final moments upon which I would like to comment.

In looking at all of the supposed charges that were given such wide distribution through the country even before Judge Haynsworth had an opportunity to appear before the committee, I can find only one very slight area in which he might possibly be criticized. And that area, if we are going to put even the slightest tinge of question relating to his great career, comes in the Brunswick case.

So I think I have to put before the Senate what the actual facts are and put them finally, clearly, and simply so that everyone understands why there not only was no wrong committed, there could not have been anything wrong in that situation.

I suppose that one would have to be a lawyer and conversant with the courts to understand that to a conscientious man who hears two or three and sometimes four appeals a day, the names of the participants become a completely minor and unimportant matter as far as the decision is concerned.

On the day in question, three judges heard three cases. And immediately after hearing the Brunswick case, they made up their minds and decided that the Federal district court judge who heard the case, at the trial level, was correct.

It was a quarrel simply between people who held a conditional sales contract or mortgage upon some equipment and the local man who owned the building in which the equipment was located. It had nothing to do with the broad overall integrity of the Brunswick Co., as such.

From the standpoint of the Brunswick Co., it was a minuscule thing, one which would not have caused the board of directors to have spent any time upon the case or the decision that was rendered.

Some 6 weeks after that time, the stock broker for Judge Haynsworth recommended the Brunswick stock to him and the judge told him to go ahead and buy some of the stock. The significant thing is that all that remained to be done at that time was for the judge who had been assigned the opinion to render the opinion to the chief judge of the court and for the other judges in turn to approve of it, as containing what had previously been agreed upon.

So, what do we have? We have a situation in which a decision was rendered by the court immediately after the case was heard. Six weeks after that time, we find that Judge Haynsworth did buy some

stock in a corporation that had an interest in that case. The decision was made. It was never changed. From 5 or 10 minutes after the court adjourned following its decision until the present day, the opinion was never changed. And what remained after that was strictly an administrative act.

So, technically, perhaps, and only technically, did he participate in or do something which might be construed as being not exactly within the range of propriety, on first flush.

I point out to my friends in the Senate who are going to vote or who declare that they are going to vote against Judge Haynsworth on this basis that they are putting a standard on this man which they have refused to put on themselves and which they have not put on any man who has ever come before the Senate of the United States for confirmation.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield 2 additional minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 2 additional minutes.

Mr. ALLOTT. Mr. President, I will point out one other thing which has been mentioned with reference to the philosophy involved. And then I will be through.

There has been mentioned in the Senate Chamber that some did not approve of his philosophy based upon his attitude toward labor. Others have said they did not approve of his philosophy based upon his attitude toward civil rights. One Senator claims that we should read only the opinions written by Judge Haynsworth. Others claim that we should look at all of them.

When we do look at them all, we do not find any abandonment of a social conscience on the part of Judge Haynsworth.

There is no other U.S. Senator—and I do not care who he is or from what State he comes—who has supported the cause of civil rights more ardently, more fervently, and who has put in more hours and more midnight hours during the debate on the Civil Rights Act of 1957 and on the Civil Rights Act of 1964 than the Senator from Colorado.

No one supports the principles of civil rights more than I do, because I feel it is more than just a matter of appealing to the voters. To me it is a matter of conscience. It is a matter of my religion.

If GORDON ALLOTT can vote for Judge Haynsworth on this basis, there is not any other Senator who cannot also vote for him on the same basis. We have to do justice to this man. And, the Lord willing, we cannot turn down a man against whom no case has been made. The only way we can make a case against him is to strain at a gnat.

No case has been made. And we might tear down his reputation and send him home with his reputation and his life ruined by the decision that will be made here.

So I shall support him wholeheartedly. I sincerely hope that all other Senators will do the same.

Mr. HRUSKA. Mr. President, I yield 15 minutes to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota is recognized for 15 minutes.

Mr. MUNDT. Mr. President, I have followed with great interest in the press and throughout the pages of hearings and the debate on the floor the arguments relating to the nomination of Judge Clement Haynsworth to be an Associate Justice of the Supreme Court of the United States.

Being neither an attorney nor a member of the Judiciary Committee, I have naturally felt inclined to defer on any technical legal points to the judgment of the members of the committee charged with that responsibility.

There is one point, however, that I have not considered impelling in the past when it comes to voting for the confirmation of a Supreme Court nominee and that is also relevant today. I allude to the so-called political philosophy of the nominee. I usually know what it is. I may agree or disagree with him. However, I have not cast my votes on confirmation decisions on that basis. I sincerely hope that by its decision here today, the U.S. Senate is not going to establish a new precedent of an altogether different approach toward confirmation—and that is to base our decisions on whether one might individually agree to the potential decisions to be made by the Associate Justice involved.

Let me add that Judge Haynsworth has been characterized in the press as a conservative. If that means that he could be expected to apply strict construction to the Constitution, I happen to agree with that philosophy.

Furthermore, I believe that men of this caliber are long, long overdue on the Court, to restore some semblance of balance between the loose constructionists and the strict constructionists. But while this may give me a sense of satisfaction as I vote for confirmation of the nomination—and I shall so vote—I would vote for him, nevertheless, if his philosophy were otherwise. I have done so in the past.

On September 25. 1962, I voted for the confirmation of the nomination of Arthur Goldberg. On August 11, 1965, I voted to confirm the nomination of Abe Fortas. On October 30, 1967, I voted to confirm the nomination of Thurgood Marshall. In all three instances, I think it would be fair to say that, on general philosophical terms, I disagreed with the well-known attitudes of these nominees. Surely, their stands on great issues of our time were well known—much more so, in fact, than we know about the potential stand of Judge Haynsworth. As opposed to the present nominees, they were prominent advocates of the so-called liberal viewpoints, who had spent their lives in public or political affairs and not on the bench, picking up valuable judicial experience, which has been the background of Judge Haynsworth. Their philosophy was sired and shaped long before they went to the Supreme Court.

I voted for the confirmation of their nominations even though I disagreed with them, because I can find nothing in the Constitution that indicates the Senate should vote against a nominee for the Supreme Court on philosophical grounds. I voted for confirmation of the three nominations I mentioned, even though I was concerned about the philosophical point of view of each of these nominees.

The President who made those nominations was not a President of my political party, but he was my President. He had won the election, and with it he had won the right to name the nominee of his choice to the Supreme Court of the United States. The Senate confirms or does not confirm on reasons other than political philosophy, because that issue was determined by the election of the President. It was determined by the voice of the people when they voted for that high Office.

Mr. President, there has been some talk in another context, one which I shall discuss shortly, about the use of a double standard on this confirmation. I think there would be such a double standard, if Members of this body vote against Judge Haynsworth on philosophical grounds—and I believe this is the crux of the issue—because in the past many of us have bit the bullet and confirmed the nomination of presidential choices not to our own liking.

For many years, the senior Senator from South Dakota has been among those Senators and other public officials who have been greatly concerned about the tendency and the trend of the Supreme Court to conduct itself as a third house of the legislative branch, to make decisions which are not an adjudication of constitutional principles but are an expression of a social or a political or an economic point of view. I have resented this trend. I have deplored it publicly many times. I joined with the distinguished Senator from Colorado one time when the Senate even denied an increase in pay to the Justices of the Supreme Court as an expression on the part of the Senate of our resentment of their intrusion into the legislative arena.

I should now like to emphasize a point I have not heard discussed very much on the floor of the Senate. To be consistent, however, it seems to me that every Senator who shares this point of view, who feels that it is not the proper province of the Supreme Court to inject itself into the legislative determinations of the land—I feel that if we share that point of view, we should be bound by a rule that works both ways. If—as I intend to do, and as I have done in the past—I express myself in opposition to that tendency and that trend on the part of the Supreme Court Justices, it seems to me that I and other Senators who hold this conviction should then refrain from any efforts on the part of our legislative branch, to bend the judiciary to its point of view. It seems to me that we should maintain and practice this precious constitutional separation of powers. It seems to me that if it is sauce for the goose, it is sauce for the gander.

I see no logic or consistency in taking the position—which I take—that the

Supreme Court should not try to enter our arena and determine our attitudes and bend our legislative decisions to its will, and then for Senators of the United States to use the power of confirmation to try to coerce the Supreme Court to try to make it bend its decisions toward our position. I do not think we can have the best of both worlds. If we are going to be consistent, the same rule should apply to both branches of Government, and I expect to be consistent. I shall vote for the confirmation of Judge Haynsworth.

I want to say, also, that I do not think the power of confirmation of the Senate should be changed, from what is included in the Constitution, to a whole new concept which I hear argued on the floor of the Senate all the time, that many Senators are now going to vote only for those judges who they think are going to make verdicts with which they will agree. They hope to make the Haynsworth case a precedent by defeating his confirmation. This is as reprehensible—in my opinion—as having the Supreme Court entering the legislative arena to try to coerce us into making legislative decisions in conformity with what the Court desires and demands. To beat back such a revolutionary change in concept, I for one hope, should Judge Haynsworth fail in the ensuing vote that President Nixon will soon send to the Senate the name of a nominee fully or even more conservative than Haynsworth. For that way the basic issue here involved will be clearly drawn and definitely decided by this same Senate membership.

The Constitution is involved in this matter, and I think Senators should reflect very carefully before they help to write a new formula of desideratum to be considered in terms of confirmation of nominees for the Supreme Court. I do not think they should have in this kind of decision the attitude that we are going to vote only for the confirmation of nominees for the Supreme Court that they expect are going to agree with them. Had that been my conviction, I am free to say that I would have voted against Fortas, I would have voted against Marshall, and I would have voted against Goldberg and a great number of other judges whose nominations I have voted to confirm. However, I do not think it is my province as a legislator to try to build a court and coerce a decision with which I am going to be in agreement.

As to the other factors in this discussion, they have been debated ad infinitum, ad nauseam. I should like to address myself briefly to three which I believe still need some discussion. They are the so-called ethics issue, the impact of the controversy on Judge Haynsworth's effectiveness should he be confirmed, and, finally, the differences between the cases of Justice Fortas and the situation that we now confront from the standpoint of Judge Haynsworth.

I have already indicated the attitude of a nonlawyer, nonmember of the Judiciary Committee when it comes to examining technical legal points. It was interesting, therefore, to read the report of the committee on the question of one of the most subjective of these technical points—had Judge Haynsworth behaved ethically according to the stringent rules members of the bar apply to themselves?

There were a total of 17 members on this committee who submitted their various views to this body. Nine Senators approved the majority report, exonerating Judge Haynsworth from any ethical impropriety or violation of the Federal statute pertaining to disqualifications of judges such as would cast any doubt on his fitness to sit as an Associate Justice of the Supreme Court. Three Senators—the junior Senator from Indiana, the junior Senator from Michigan, and the senior Senator from Maryland—filed individual views indicating sufficient reservation about the so-called ethical charges against Judge Haynsworth as to lead them to vote against confirmation. Other Senators on the committee opposed the confirmation on quite different grounds.

Since I wished to place some weight on the committee findings in making my own determination, I found this division of opinion instructive. Although the newspaper accounts indicated, quite correctly, that the committee at the time it voted to send the nomination to the floor with a favorable recommendation did so by a vote of 10 to 7, examination of the actual views filed shows that only 12 of the 17 members addressed themselves to the so-called ethics question, and of those 12, nine found in favor of Judge Haynsworth and three found against him. On this ethics question, then, the committee's views indicate that the division was not at all a close one, and that by a margin of 3 to 1 the committee exonerated Judge Haynsworth of any ethical improprieties.

I have also been impressed by the reputation of Judge Haynsworth in that part of the country in which he once practiced as a lawyer, and has for the past 13 years sat as the chief judge of the highest Federal court of the region. His six fellow circuit judges sent him a telegram, at a time when all of the charges against him and whatever evidence there may have been that was thought to support them had been made public, voicing their "complete and unshaken" confidence in his "integrity and ability." Abraham Lincoln made a famous statement at one time about fooling people:

> You can fool all of the people some of the time and you can fool some of the people all of the time, but you can't fool all of the people all of the time.

Along this same line, it seems to me that it would be very difficult for an appellate judge to "fool or deceive" his six fellow judges, with whom he worked in conference and in hearing cases, and over whom he has presided as chief judge of an appellate court since 1964. If there were something wrong with a man's ethics, or with his standards of propriety, certainly these six fellow jurists would have good reason to know about it. Yet they, in the face of an organized drive to discredit Judge Haynsworth, chose to volunteer their complete and unshaken confidence in his integrity and ability.

Not merely his fellow circuit judges, but all of the district judges in the entire area served by the Court of Appeals for the Fourth Circuit—all of the Federal district judges in Maryland, Virginia, West Virginia, North Carolina, and South Carolina—publicly signified their confidence in Judge Haynsworth, and their support of his confirmation.

I am advised that both as a result of annual judicial conferences, and frequent occasions on which the various district judges are called to sit as members of the Court of Appeals and hearing a case on appeal, there is opportunity for constant contact between the district judges in a circuit and the circuit judges. I have not the slightest doubt that if there was something wrong with Judge Haynsworth's integrity or his ethics, these district judges would have long since known of it. Yet they, too, when all the information dug up by Judge Haynsworth's opponents had been made public, themselves publicly indicated their support of Judge Haynsworth and their confidence in his integrity.

The American Bar Association conducted an elaborate and detailed interviewing program embracing both lawyers and judges who had been associated with Judge Haynsworth. Judge Lawrence Walsh, the chairman of the ABA's Committee on Judicial Selection, said that it was the "unvarying, unequivocal, and emphatic" view of "each judge and lawyer interviewed" that Judge Haynsworth is beyond any reservation a man of impeccable integrity.

There are those who say, in connection with this nomination, that even though the ethical accusations be without substance or merit, nonetheless they cast a "cloud" over the nominee, and that cloud is in itself a ground for rejecting him. But let us think for a moment what sort of a standard we would be setting for future debates over confirmation of judicial nominees if we accept this point of view. In these days of extensive media coverage of any controversial situation, it does not take much in the way of substance to an accusation to make it headline news.

As we all know, the answers and the factual support to show that a charge may be without foundation never quite catches up with the charge, even though the charge be wholly without substance. To adopt this sort of a policy on which to base one's vote on this nomination would be to say to every special interest group in our country that they have it within their power to defeat any future nominee to the Supreme Court, however upstanding he may be and however impeccable his record may be, if they can only dredge up something upon which to base an accusation. The gross unfairness of this course of procedure should be apparent to all.

History tells us, Mr. President, that the Supreme Court has not been without controversial members in the past—members who were vigorously attacked at the time they were nominated, who survived the attack to be confirmed, and who served ably and well in the high office to which the Senate confirmed them.

Roger B. Taney served for 28 years as Chief Justice of the Supreme Court of the United States. Only John Marshall, who served in that high office for 34 years exceeded Taney's tenure in the highest judicial office in our Nation. Taney was

nominated as an Associate Justice of the Supreme Court in 1835 by President Andrew Jackson. President Jackson had named him in 1831 as Attorney General, and in 1833 he had been appointed as Secretary of the Treasury for the purpose of withdrawing the deposits of the U.S. Government from the Bank of the United States, which the previous Secretary had refused to do even at President Jackson's insistence. Taney complied with the President's directive on the deposits, and as a result of this fact he was violently opposed by all of the Bank's supporters in the Senate when his nomination as Associate Justice came before that body. This opposition was sufficient to defeat the nomination through a parliamentary maneuver in the last days of that session of the Senate.

If ever a man was under a "cloud" it was Taney at this point, who had been accused by his opponents of being nothing but a spineless creature of the President in the previous office which he had held. Nonetheless, President Jackson, upon the death of Chief Justice Marshall in 1835, again sent his name to the Senate, this time to be Chief Justice of the United States. And this time, although opposition still continued, Roger Taney was confirmed in that office. His subsequent 28 years of service on the bench are regarded by historians of the Court as having brought distinction and credit to the high office which he held.

When President Wilson nominated Louis D. Brandeis to the Supreme Court in 1916, that nominee also faced a storm of criticism. Historians have concluded that much of the opposition to Brandeis, although couched in terms of ethical insensitivity, was in fact based on opposition to the nominee's philosophical views. I wonder if there may not be some parallel to the Brandeis situation in the case of the nominee now before us. But then, too, the position was taken by some of the opponents that it was sufficient that charges had been made against the nominee, even though they might not have merit. The minority report of the Subcommittee of the Judiciary Committee to which the Brandeis nomination was referred contained this language:

> A man to be appointed to the exalted and responsible position of Justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not, his confirmation would be a mistake.

This position was rejected by the majority of the Senate Judiciary Committee, and by the Senate as a whole, at the time that Justice Brandeis was confirmed. It should be rejected by the Senate now. To suggest that the mere making of charges against a nominee, even though they prove unsubstantiated, is itself ground for refusing to confirm him, gives an open invitation in the case of future nominees to special interest groups who may well act from unworthy as well as from worthy motives. They will be told, in effect, that if they can muddy the waters enough, they can assure the defeat of even the most highly qualified nominee. They did not succeed in the case of Roger Taney, they did not succeed in the case of Louis Brandeis, and they should not succeed in the case of Clement Haynsworth.

They did not succeed, either, in the case of Charles Evans Hughes. Hughes was nominated to be Chief Justice of the Supreme Court by President Hoover in 1930. Hughes was attacked by Senator George W. Norris because, in the words of Hughes' biographer, Merlo Pusey:

> For two single "fundamental reasons" he thought the nomination was unwise. After Hughes had resigned from the Supreme Court to run for the Presidency and after he had amassed a fortune in practice by reason of his former high position, Norris said, the President had returned him to the judicial tribunal which he voluntarily left to engage in politics and the amassing of a fortune. The Senator feared that such a precedent would encourage political activity on the part of Supreme Court judges. In the second place, he said Hughes had represented "untold wealth"; he had associated with Wall Street and lived in luxury. ". . . it is reasonable to expect." Norris concluded, in a sweeping generalization untainted by any relationship to fact, "that these influences have become a part of the man. His viewpoint is clouded. He looks through glasses contaminated by the influence of monopoly as it seeks to get favors by means which are denied to the common, ordinary citizen."

Hughes' biographer goes on to describe the position in which he found himself as the charges were made on the Senate floor:

> While the debate waxed hotter with each passing hour in the Senate, Hughes was in New York in a state of mental agony. Always thin-skinned to criticism in spite of his extraordinary poise in public, he felt that his toil and faithfulness of a lifetime were being smeared over by a sickly smudge that might leave his name tarnished as long as it would be remembered. If he could have foreseen this tirade of abuse, which apparently no one foresaw, he never would have permitted his name to be submitted. Now that the fight was on, however, he would not turn back. Nothing that was said in the Senate gave him the slightest twinge of conscience. His anguish was that of the builder who sees the temple he has erected defiled and hacked by wild, unthinking men in pursuit of what they suppose to be a noble cause.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Those who are in the gallery are guests of the Senate, and they must cease all conversation.

The Senator may proceed.

Mr. MUNDT. Mr. President, there is nothing that we in the Senate can do to prevent those who wish to oppose the confirmation of a nominee, whether it be from the noblest or from the basest of motives, from having their day before the Judiciary Committee, on the floor of the Senate, and in the public print with whatever charges they seek to make. Indeed, in a free country no one would desire to prevent them from doing this if they so desire. But it is quite another thing to suggest to the Senate, as some Senators imply because these charges have been made, that it ought to abandon its role of sitting in judgment on the charges, and in effect "wash its hands" of the matter without a decision on the merits.

Charles Evans Hughes was ultimately confirmed by the Senate after a bitter debate on the floor. He joined Louis Brandeis and Roger Taney in the history of the Supreme Court as an outstanding member of that institution. I do not believe it can be said, in the light of these examples from history, that an able man is any the less useful when he reaches the High Court because he has been subjected to violent but unmerited abuse during the confirmation process. And certainly from a point of view of public morality, the nominee is entitled to be vindicated by the Senate if the charges made against him are unsupported, just as surely as he ought to be rejected by the Senate if the charges are true.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. MUNDT. Mr. President, finally I would like to discuss what some have charged as a double standard of the Senate in regard to this nomination and that of Associate Justice Fortas to be Chief Justice of the Court.

The Fortas "affair" and the current controversy over the nomination of Clement Haynsworth to the Supreme Court are being unfairly and improperly compared. The conduct of these two men is as dissimilar as night is to day.

Some have publicly suggested that the same rules must be applied to Haynsworth that were applied to Fortas and to do otherwise would be a perversion of one's moral standards. As I have previously indicated, I must agree completely. A double standard must not exist. The members of our Nation's judiciary must all meet the same high test and the Members of this body must cast aside any political prejudices and vote on the basis of these tests and these tests only.

This should apply to sitting judges as well as judges who are about to be confirmed. We should not have two classes, first-class and second-class Justices on the Supreme Court, some bounded by one standard of ethics, and some by quite different standards.

When many speak of the Fortas "affair" they forget that in fact Fortas and his outside activities while on the Supreme Court drew public attention on more than one occasion and for more than one reason, including accepting money from a convicted criminal. The first was when President Johnson nominated him for the position to be vacated by Chief Justice Warren. This was just a year ago this fall. Of course, Fortas was then an Associate Justice on the Court and it is to this point that I call the attention of my colleagues and suggest there is no similarity in the debate today and the debate last year.

The concern of the Senate at that time with Mr. Fortas and his elevation on the Bench centered around the charges of cronyism and that he was too deeply involved as a member of the Supreme Court in executive policymaking; thus, transcending the traditional constitutional barrier between the executive and judicial branches of government.

Earlier I mentioned that I had voted to confirm Mr. Fortas as a member of the Supreme Court, even though I believed his philosophy to be alien to mine, and even though it was clear his qualifications for the position lay more in the political field than in the judicial field. I did this because I believed President Johnson had the right, other things being equal, to select his own man with the knowledge that past experience had shown members of the Court once confirmed observed the separation of powers edict so essential to our form of government. Indeed, as prior examples have indicated, they have gone on to be outstanding members of the Court. They did this by forsaking the more heady challenge of executive decisionmaking, while members of the judiciary, for the deliberate recluse of a judge. The same cannot be said for Justice Fortas.

The Judiciary Committee hearing record reflects allegations that while on the Supreme Court, Fortas, first, reviewed legislation for the Johnson administration and put his stamp of approval on it, recorded at page 1349; participated in conferences and White House discussions on the Detroit riots and the Vietnam war, recorded at pages 105–106; promoted candidates for a judgeship and a State Department position, recorded at pages 47 and 48; and, at the request of the President, put pressure on a business associate and friend to quiet criticism of the high cost of the Vietnam war, recorded at page 167.

Fortas was queried about these matters when he appeared before the Judiciary Committee. He categorically denied supporting any candidate for the district court or the Department of State, recorded at page 103.

When confronted with the charges concerning discussions at the White House and reviewing and drafting legislation, Fortas said:

> The President of the United States, since I have been an Associate Justice, has done me the honor, on some occasions, of indicating that he thought that I could be of help to him and to the Nation in a few critical matters, and I have, on occasion, been asked to come to the White House to participate in conferences on critical matters . . . (Recorded at p. 104.)

When confronted with specific charges, Fortas answered:

> Again, Mr. Chairman, I do not want to—I do not think it would be proper to go into specifics . . . (Recorded at p. 104).

After persistent interrogation by members of the committee, he reluctantly conceded that he had participated in the Detroit and Vietnam discussions, recorded at page 106. Several probing questions were answered by raising an intangible claim of confidentiality surrounding conversations with the President, thus frustrating the effort to develop facts relating to the charges.

The entire interrogation was marked by Fortas' reluctance to volunteer information and only when confronted with facts would he address himself to the issue.

For some Senators, these facts and disclosures alone were enough to reject Fortas as Chief Justice. When discussing Fortas' extrajudicial activity, Senator ERVIN stated:

> Justice Fortas has denied some of these charges, and downgraded the importance of others he has admitted. To some he has declined to respond (S. Ex. Rep. No. 8, 90th Cong. 2nd Sess. p. 34)

Senator ERVIN opposed the elevation of Fortas to the Chief Justiceship.

When discussing the legislation which Fortas allegedly drafted for the administration, Senator MCCLELLAN stated at page 29 of the report:

> It caused me, therefore, to speculate during the hearings that if Mr. Justice Fortas was being consulted and advising the White House on such simple legislative issues, then it is quite reasonable and proper to assume that it has been a practice for the White House to consult with him and to seek his advice with respect to legislation that may become quite controversial and the subject of litigation involving vital constitutional questions. This certainly transgresses the correct concept of separation of powers.

Senator MCCLELLAN opposed his elevation to the Chief Justiceship.

All this is a part of the Fortas "affair" and conduct which some would ask you to believe Judge Haynsworth guilty of. Yet, has there been any allegation or evidence that Judge Haynsworth participated in White House conferences and discussions? Has there been any allegation or evidence that Judge Haynsworth has drafted legislation for the administration? Has there been any allegation or evidence that Judge Haynsworth interceded with associates to "take pressure off" the administration? The answer to these questions is obviously "No." There is no evidence and there have been no allegations for the simple reason that Judge Haynsworth did not do any of these things. Thus, the proposed analogy between the two cases is discredited and I need discuss it no further except to add this.

I would apply the same test on separation of powers to Clement Haynsworth if that were the question before us but it is not. The two cases are entirely different.

Mr. President, I have stated in the earlier part of my remarks my reasons for concluding that the charges with respect to Judge Haynsworth's conduct as a judge of the court of appeals are without substance. Having so determined, I shall cast my vote for confirmation, confident that the teachings of history do not suggest that I do otherwise, and that the teachings of morality would not allow me to do otherwise.

The PRESIDING OFFICER. The additional time of the Senator has expired.

Who yields time?

The Chair inquires as to who yields time.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum with the time to be charged to both sides.

The PRESIDING OFFICER. Is there objection?

Mr. HRUSKA. Mr. President, there is objection. I suggested the absence of a quorum awhile ago and charged the time to my side. I suppose the Senator from Indiana is about ready to proceed.

Mr. BAYH. Mr. President, the Senator from Indiana is not ready to proceed. I understand that the Senator from New York is.

The PRESIDING OFFICER. The Chair reports that if no one yields time, then the time now used will be charged to both sides equally.

Mr. MANSFIELD. Mr. President, I think the Senator from Nebraska made a valid point. He said he had put in a quorum call with the time taken from his side.

Mr. BAYH. Mr. President, I suggest the absence of a quorum, the time to be taken out of my side, with the understanding that the time for this quorum call shall not exceed that utilized by the Senator from Nebraska.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. I yield to the Senator from New York for 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, as we come to the last part of this debate on the Haynsworth nomination, I think a summing up is important.

The three grounds for opposing Judge Haynsworth's confirmation which have been referred to in the debate have been one, improper conduct; two, the implication of his civil rights decisions; and, three, his decisions in labor cases.

Mr. President, I have chosen to take my stand on the second ground, that is, the decisions of Judge Haynsworth in the civil rights cases. I must say that it is important to qualify that by saying that although I have decided it on that ground, I think it is not necessary for me to decide the merits of the other objections.

This does not mean that I find the ethical question without merit. The Senator from Kentucky (Mr. COOPER) examined that question last night in a most eloquent way, as did the Senator from Indiana (Mr. BAYH) and the Senator from Michigan (Mr. GRIFFIN) who sat through the hearings. They have made telling arguments. My reason for stating that personally I did not need to reach that conclusion is simply that I have other grounds for my own decision rather than any derogation of the findings which these eminent men have made on this subject.

I would like to say to those of my colleagues who may yet be listening to this debate, and who are also committed to the historic 1954 decision of the Supreme Court in Brown against Board of Education on the desegregation of schools, that if you have any doubt at all about the conflict of interest issue, you need not decide that matter finally against Judge Haynsworth, for you can rest your vote on the basis of Judge Haynsworth's civil rights decisions alone. This nomination, on that ground alone, in my judgment, should not be confirmed.

Now, Mr. President, I have analyzed the opinions on previous occasions.

It is not an analysis, in this instance, requiring endless research, because Judge Haynsworth has written in his own words civil rights opinions in only 17 civil rights cases. These are:

Dillard v. *School Board of Charlottesville*, 308 F. 2d 920 (4th Cir. 1962), *cert. denied*, 374 U.S. 827 (1963); *Bell* v. *School Board of Powhatan County*, 321 F. 2d 494 (4th Cir. 1963); *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964); *Griffin* v. *Board of Supervisors of Prince Edward County*, 322 F. 2d 332 (4th Cir. 1963), *reversed*, 377 U.S. 218 (1964); *Pettaway* v. *County School Board*, 332 F. 2d 457 (4th Cir. 1964); *Eaton* v. *Grubbs*, 329 F. 2d 710 (4th Cir. 1964); *Bradley* v. *School Board of Richmond, Va.*, 345 F. 2d 310 and *Gilliam* v. *School Board of Hopewell, Va.*, 345 F. 2d 325 (4th Cir. 1965), *both vacated sub nom. Bradley* v. *School Board*, 382 U.S. 103 (1965); *Nesbit* v. *Statesville City Board of Education*, 345 F. 2d 333 (4th Cir. 1965); *Bowditch* v. *Buncombe County Board of Education*, 345 F. 2d 329 (4th Cir. 1965); *Brown* v. *County School Board*, 346 F. 2d 22 (4th Cir. 1965); *Hawkings* v. *North Carolina Dental Society*, 355 F. 2d 718 (4th Cir. 1966); *Bowman* v. *County School Board of Charles County, Va.*, 382 F. 2d 326 (4th Cir. 1967); *Green* v. *County School Board of New Kent County*, 382 F. 2d 338 (4th Cir. 1967), *reversed*, 391 U.S. 430 (1967); *Brewer* v. *School Board of the City of Norfolk*, 397 F. 2d 37 (4th Cir. 1968); *Coppedge* v. *Franklin County Board of Education*, 394 F. 2d 410 (4th Cir. 1968); *Coppedge* v. *Franklin County Board of Education*, 404 F. 2d 1177 (4th Cir. 1968).

I summarize them as follows:

Of the 17 cases in which Judge Haynsworth wrote opinions in his own words, he wrote in opposition to desegregation 13 times, and went with the prevailing constitutional view in the remaining four cases only when there was really no way to decide on any other basis.

Indeed, it is significant to me that in 1964, 10 years after the decision on school desegregation by the Supreme Court, in an open-and-shut case, the so-called Eaton case, 1964, where Judge Haynsworth ruled against the segregated hospital, he ruled and said that he was only doing this, not because he agreed—he disagreed—but, he said he was doing it because this was so clear-cut a case following Supreme Court precedent that he simply could not shut his eyes to it.

That shows sincerity and bears out what the Senator from New Jersey (Mr. CASE) argued—that within the philosophic framework from which Judge Haynsworth came, this was logical and sincere. But that does not mean we have to vote to put him on the Supreme Court.

I find, running through all of the decisions, a record of consistent, unsympathetic response on this issue.

The real, fundamental question is: Is this a proper ground for decision?

I respectfully submit that it is.

I do not believe that all we are entitled to know is name, rank, and serial number when one is being nominated for the Supreme Court, or only that he is a judge, with nothing against his character, giving him the benefit of the doubt on the conflict-of-interest issue, and that being a judge for some time, therefore, he can go on being a judge.

I do not believe that needs to be or should be the basis of our opinion. I point out that Senators like the Senator from South Carolina (Mr. THURMOND) and the Senator from North Carolina (Mr. ERVIN), who support Judge Haynsworth, have said in respect of the hearings on Justice Fortas just that, that they are not obliged to be confined solely to the fact that he is a judge and there is nothing against him in terms of his personal character, assuming that.

The Senator from Mississippi (Mr. STENNIS) also said that on the Senate floor, unequivocally, in 1955.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, will the Senator from Indiana yield me 1 more minute?

Mr. BAYH. I yield 5 additional minutes to the Senator from New York.

Mr. CASE. He must be one of the big guns.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 additional minutes.

Mr. JAVITS. I thank the Senator from Indiana.

Mr. President, Senators throughout our history, going back to the time of Lincoln and before, have set this as the basis for their decisions.

Now, Mr. President, again, we are not dealing with an official who will go out with the administration, who comes up to testify on a needed appropriation for a department. We are dealing with a judge who will be on the Supreme Court for life, who will materially influence the world in which we and our children live.

Of course, the fundamental issue is the opinions of a nominee on basic constitutional law, where we judge those opinions to be of such a nature as to make Judge Haynsworth, were he to become Justice of the Supreme Court, a constant influence to take the Court back to the separate-but-equal doctrine of the days before 1954. So I feel there is compelling basis to vote against this confirmation.

Mr. President, I have analyzed the cases where he spoke, which is the only way in which we can analyze cases. I realize that the argument is made there are many per curiam opinions which, for one reason or another, a judge might decide he will go along with the majority, or, indeed, generally speaking, to make them unanimous where there is no dissent. But where he spoke, where the case was not open and shut, in 13 out of 17 cases he made it crystal clear that the basic view he held of the Constitution, insofar as it relates to the cases decided in the civil rights field, would be, in my judgment, an influence on the Court which will carry great authority—one out of nine. And each individual Justice has on that Court had such great authority, in so many proceedings, for interim relief.

I feel that the duty to confirm, our right and responsibility in respect of confirmation, requires us to know what the Supreme Court will look like after we put a judge on it.

It is because I deeply feel that the Supreme Court, if Judge Haynsworth is on it, will have introduced into it an element which runs counter to the current of history—not on the issue of liberal or conservative—I supported Judge Burger, and I would have supported a conservative, who would not have to decide my way. But to run against the current of history, 10 or 15 years after that current of history has been determined, decides definitely, for me, that I cannot vote to confirm such a judge for the highest Court in the land for a life term.

Thus, I hope very much that Senators will seriously ponder that proposition, those who may be in some doubt as to the conflict of interest, or on other questions.

I thank the Senator from Indiana very much for yielding to me.

Mr. BAYH. Mr. President, I suggest the absence of a quorum, with the same understanding that I suggested to the distinguished Senator from Nebraska a moment or two ago.

The PRESIDING OFFICER. What is that condition set by the Senator from Nebraska?

Mr. BAYH. That the time be taken out of the time of the Senator from Indiana, to the extent that the time earlier was taken out of the time of the Senator from Nebraska; the time thereafter to be equally divided between the two of us.

Mr. HRUSKA. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Nebraska will state it.

Mr. HRUSKA. How much time is left to each side?

The PRESIDING OFFICER. The Senator from Nebraska has 9 minutes remaining; and the Senator from Indiana has 22 minutes remaining.

Is there objection to the request of the Senator from Indiana? The Chair hears none, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, we live in difficult times, and we face great challenges as a people: to cast out ignorance and poverty from our midst; to restore law and order with justice to our society; to provide equality of education for our young and the health and welfare of all our people; to protect the rights of our workers and find jobs for all who are willing and able to work; to fashion a strong and stable economy, to combat the tide of environmental pollution, and to live in a just and peaceful world.

These challenges can be met. But we will need strong institutions to face the task—institutions led by men and women who are responsive to the needs of the people.

The Supreme Court of the United States is such an institution and its leaders must be such men. They must

be above reproach, they must be experienced, and they must be able. But, even more importantly, they must possess the insight, perspective, and sensitivity to deal with the great issues presently before us and the even greater challenges that lie ahead.

It is my constitutional duty to consent to the nomination of a Supreme Court Justice. It is my moral duty to keep these beliefs in mind in casting my vote. Above all, I must vote in accordance with the dictates of my conscience.

I have reviewed the record. I have consulted with my constituents. I have studied the many communications that have reached me regarding the issue before us—communications that have argued the case for or against confirmation, often with great eloquence, passion, and precision. And I have decided—as I alone must do—that I cannot support the nomination of Clement Haynsworth, Jr., of South Carolina, to serve as an Associate Justice of the Supreme Court.

One cannot make such a decision in a vacuum. In our times, we have witnessed a broad attack on the Supreme Court and, indeed, an undermining of confidence in our key political institutions. In such a climate, the question of who shall serve on the Nation's highest tribunal assumes even greater significance. For the one quality in our democracy that must remain inviolate is confidence in our institutions.

I, for one, do not question Judge Haynsworth's ability or his honesty. I recognize that these qualities are necessary to meet the demands of his high office. But I feel that honesty and ability are not enough. The times demand something more.

I fully recognize that a man is being judged to be fit or unfit against a more exacting standard than has previously existed. And yet, with an erosion of confidence spreading before us, can we afford to employ any less of a standard than the most exacting one? Can we any longer afford to cast aside the gravity and intensity of the challenge—and to dismiss the catastrophe that would befall us were these institutions to be further weakened?

In my judgment, in view of all the evidence, Judge Haynsworth does not meet the challenge of our times—a challenge that has placed our system on trial. The question is not whether Judge Haynsworth is qualified to serve in his present position on the Fourth Circuit Court of Appeals. That is not the issue before the Senate. The question is, rather, whether he is the man at this moment in history who should be promoted to serve on the Highest Court in the land—the Supreme Court of the United States.

The question is whether Judge Haynsworth, on the basis of the record, is sufficiently sensitive to the needs of the men with whose fate he would deal.

I do not believe that the record, as I have reviewed it in the school desegregation cases and in labor-relations matters, justified such a conviction on my part.

In every labor-management case and in virtually every important civil rights case in which Judge Haynsworth participated and which was later appealed, the Supreme Court ruled against the position taken by Judge Haynsworth.

Unfortunately, the matter does not rest with that. For we must also weigh an accompanying insensitivity and a seeming indifference to the appearance of impropriety on Judge Haynsworth's part—a record that throws a dark cloud over his qualifications to serve on the Supreme Court.

Judge Haynsworth took evidence and ruled on the Darlington case while at the same time holding a major stock interest in a company doing substantial business with Darlington's sister companies. At issue in the Darlington case was one of the most bitter labor disputes in the modern history of the South, an issue that affected, for better or worse, the fortunes of thousands of workers and the company. It is unreasonable to interpret the Judge's failure to disqualify himself from the case, divest himself of the stock, or, at the very least, to disclose the apparent conflict-of-interest, as in keeping with the spirit of the Canons of Ethics of the American Bar Association.

Unhappily, the Darlington case does not stand alone. A similar failure occurred again in the Brunswick case, an occasion when the Judge held stock in a company that was also a litigant before his court. Judge Haynsworth, it seems to me, had a clear responsibility, at a minimum, to declare his personal interest to the litigating parties and to his fellow jurists.

It is not insignificant that Judge Haynsworth informed the Senate Judiciary Committee in writing after the nomination came before the Senate that he had previously disqualified himself from all cases where he had a personal financial interest or in which he would be directly affected by the outcome of the litigation.

This is not an easy task for me. The events that have reached a climax in this vote have taken their toll. Not the least of those who has suffered is the man whose confirmation has been before us today. Judge Haynsworth has my sympathy. But I cannot, in good conscience, support his nomination.

Mr. CHURCH. Mr. President, on November 14, my distinguished colleague from Idaho (Mr. JORDAN) delivered a speech dealing with the nomination of Judge Clement F. Haynsworth, Jr., to the U.S. Supreme Court.

To my mind, the comments of my colleague represent some of the clearest thinking expressed with regard to this nomination. His sincerity and the depth of his concern for our country and its institutions are quite beyond question. Furthermore, his argument was, to my mind, irrefutable.

I concur with the decision of my colleague. I shall cast my vote against the confirmation of Judge Haynsworth.

Mr. MANSFIELD. Mr. President, the committee's hearings and report on the nomination of Judge Haynsworth have been before the Senate for many days. There has been ample time to study the results of this thorough examination. In majority and individual views, the learned members of the committee have provided highly competent guidance for the rest of the Senate.

On the basis of the committee's work, I am persuaded that the question of confirmation does not involve Judge Haynsworth's views on labor or civil rights. It is by no means conclusive that he is predisposed to other than a judicial approach to any litigation which may come before the Supreme Court in these subjects. Moreover, I do not see that it is a necessary qualification for a judge to make obeissance before any group whatsoever in our society in order to qualify for the Court.

What troubles me has to do with the personal business pursuits which Judge Haynsworth has followed during the period that he has served on the bench. I find it somewhat startling, for example, to note that he felt it necessary to sell Vend-A-Matic stock in 1963 out of a concern lest his participation in its activities become public knowledge. His sitting in the Brunswick Corp. case while a "substantial stockholder" in that corporation reveals a certain casualness in matters involving a question of judicial ethics, which the Senate made clear last year that it wished to prevail in the seating of Justices of the Supreme Court.

The instances of this kind, which are outlined by the Senator from Michigan (Mr. GRIFFIN) and other members of the committee, seem to me to demonstrate a pattern which says that this nominee has not been as concerned as a Judge of the Supereme Court should be lest his private business interests come in conflict with his public repsonsibilities.

Political considerations have not been involved in reaching my conclusion in this matter. I would note, for the record, that I joined with the vast majority of the Senate in supporting the confirmation of the nomination of Chief Justice Burger, President Nixon's first nominee to the Court. In this instance, I will join with two leaders of the Republican Party in the Senate, the Senator from Michigan (Mr. GRIFFIN) and the Senator from Maine (Mrs. SMITH) who have already announced their intention of voting against the confirmation.

I make this statment with deep regret.

Mr. HARRIS. Mr. President, I have previously stated that I did not feel the Senate should advise and consent to the appointment of Judge Clement F. Haynsworth, Jr., to the Supreme Court of the United States.

A great many Members of the Senate have now spoken out against this nomination, either indicating their serious concern about certain canons of ethics matters, or have called into question his sensitivity to the rights of individuals recognized to be within the reach of the law, or both.

It is now clear that a large and impressive number of Senators as well as a large segment of the American people are disturbed about this nomination, and a very important consideration now before the Senate is one of determining what effect confirmation of Judge Haynsworth would have upon confidence in our judicial system.

Diogenes, over 2,000 years ago, is supposed to have spent a lifetime searching for an honest man. His unsuccessful search must have resulted from his own too-rigorous definition of honesty, for

surely there were many men in his time who would have have satisfied the usual requirements of that term.

No one suggests that we should measure the nomination of Judge Haynsworth by the strict test of Diogenes, but I believe that all of us would agree that membership on the U.S. Supreme Court, a position of the highest honor and trust in our Republic, should be conditioned upon standards which are higher than those usually expected in ordinary business and professional life.

I have heard it said that in other years a nomination such as that now before us would not have been so carefully considered and examined by the Senate. If that were ever true, it should not be true now. The responsibility of the Senate to advise and consent is a heavy burden, today more than ever, and each of us individually and as a body must fulfill that responsibility with an exercise of due care.

In our time, we have witnessed the development of new dimensions in the definition of human rights and individual liberties, largely as the result of decisions by the Supreme Court. To some degree, this development is called into question by the pending nomination.

All of us would agree that judicial experience and intellectual excellence are important qualifications for an appointment to the Supreme Court. We may disagree, however, on the extent to which the philosophy of a nominee to the Supreme Court is open to consideration. But in the history of confirmation of Supreme Court Justices, which is traced in the book, "The Advice and Consent of the Senate," by Joseph P. Harris, it is clearly established that in almost all instances of opposition to a Supreme Court nominee since 1900, such opposition was "due to the philosophy and supposed stand of the nominee on social and economic issues rather than to partisan considerations."

As have other Senators, I have studied many of the legal opinions of Judge Haynsworth and I have concluded, as did the distinguished senior Senator from Michigan (Mr. HART), that there is reason to believe that this nominee is "insensitive to the rights of individuals recognized to be within the reach of the law." There is surely a broad area for philosophical divergences that would be acceptable to most fairminded citizens of this country. Just as surely there is a point where a judicial philosophy is not compatible with modern and progressive legal thought.

I fully recognize that there are those who feel the Supreme Court has gone too far in certain decisions. It is important that they, as well as all others, have confidence in our judicial system. But I believe that the President can accomplish this objective by another appointee whose views are within the broad stream of accepted opinion on human rights.

In addition to intellectual and philosophical qualifications, a nominee for the Supreme Court must be above ethical question or reproach, because he is appointed for life to hear final appeals for human justice. This may be a harsh rule to apply to Judge Haynsworth. But the Supreme Court should set a pattern of such honesty and personal integrity that it will serve as an example for every court in this Nation and deserve the faith and confidence of every man in the justness of its decisions.

On this question I am impressed by the statement of the distinguished Senator from Delaware (Mr. WILLIAMS):

> Perhaps no single decision or action of Judge Haynsworth to which the committee report alludes is of such a grave nature as to require a vote against his confirmation, but when all the pertinent matters are viewed collectively one can discern a pattern which indicates that Judge Haynsworth is insensitive to the expected requirements of judicial ethics, especially the rule that requires judges to separate from active business connections and to avoid even the appearance of impropriety.

I must vote against confirming this nomination. I do this not from any personal feeling against Judge Haynsworth, nor believing him other than an honest man, but from a sense of personal responsibility concerning the reputation and future of the Supreme Court.

Mr. WILLIAMS of New Jersey. Mr. President, in October, 1967, the case of Brunswick Corp against Long was assigned to a three-judge panel of the fourth circuit court of appeals. Clement Haynsworth was a member of that panel. The case involved the issue of whether or not a chattel mortgage held by Brunswick on bowling lanes and pinsetters which it had sold to the operator of a bowling alley took precedence over a landlords lien for accrued rent.

The three-judge panel heard oral arguments from the parties on November 10, 1967. Immediately, thereafter they met in conference and orally voted to affirm the judgment of the district court in favor of Brunswick. The actual decision, however, was not made public until February 2, 1968. Between November 10 and February 2 the only individuals having knowledge of the courts pending decision were Judge Haynsworth and the two other members of the panel. Yet, on December 20, 1967 Judge Haynsworth placed an order through his stockbroker to purchase 1,000 shares of Brunswick Corp. stock at $16 per share.

To me, the ethical impropriety of such a transaction is obvious. However, as chairman of the Securities Subcommittee I find that the Brunswick transaction also raises serious questions as to Judge Haynsworth's conduct in view of the provisions of section 10b of the Securities Exchange Act.

One of the primary objectives of the Securities Exchange Act of 1934 was to restore investor confidence in our Nation's securities markets. The loss of such confidence which had been caused by the trading on information available to only a privileged few was recognized by Congress as early as 1934.

The Senate committee report on the Securities Exchange Act, Senate Report No. 1455, 73d Congress, second session 68, clearly and concisely stated:

> The concept of a free and open market for securities necessarily implies that the buyer and seller are acting in the exercise of enlightened judgment as to what constitutes a fair price. Insofar as the judgment is warped by false, inaccurate, or incomplete information regarding the corporation the market price fails to reflect the normal operation of supply and demand.

To achieve these purposes Congress enacted section 10b of the Securities Exchange Act of 1934, 15 U.S.C. section 78j(b).

Over the last 35 years it has been abundantly clear that a free and open market for securities cannot be achieved when one of the parties to a transaction has material information which is unavailable to the other. The most recent expression of this premise was in *SEC* v. *Texas Gulf Sulphur Corp.*, 401 F. 2d 833 (2d Cir. 1968). The court, relying on the SEC's prior decision in *Cady, Roberts & Co.*, 40 SEC 907 (1961) summarized the bans imposed upon the use of "insider" information:

> Thus, anyone in possession of material inside information must either disclose it to the investing public, or, if he is disabled from disclosing it in order to protect a corporate confidence, or he chooses not to do so, must abstain from trading in or recommending the securities concerned while such inside information remains undisclosed.

The law in this area is clear. In 1961 the Securities and Exchange Commission in the matter of Cady, Roberts & Co. found that the obligation to disclose inside information or to refrain from trading on it extended to any person who knowingly possessed such information. There is no exemption from this Statute for Federal judges.

In its 1961 opinion, 40 SEC at 912, the Commission stated:

> Analytically, the obligation rests on two principal elements; first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone, and second, the inherent unfairness involved where a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.

Obviously, Judge Haynsworth, on December 20, 1967, when he purchased 1,000 shares of Brunswick Corp. stock, knew that he had in his possession information which was unavailable to those with whom he was dealing. On December 20, 1967, the only people who knew of the fourth circuit's decision were the three members of the judicial panel.

The only other factor involved in determining whether Judge Haynsworth violated section 10(b) of the Securities Exchange Act is whether the information in his possession concerning Brunswick was material and should therefore be publicly disclosed.

In both the Texas Gulf Sulphur and Cady, Roberts cases, material information was defined as those facts which may affect the desire of reasonable investors to buy, sell, or hold the company's securities. The courts have stated:

> The basic test is whether a reasonable man would attach importance . . . in determining his choice of action in the transaction in question.

This test includes any fact "which in reasonable and objective contemplation might affect the value of the corporation's stock or securities."

Such facts must be disclosed to the investing public prior to the commence-

ment of trading in a corporation's securities. They included not only information disclosing the earnings of a company, but also those facts which affect its probable future. Disclosure must also be made of facts which could affect the desire of investors to buy, sell, or hold the company's stock. In enacting section 10b, congressional intent was to give all investors equal access to corporate information and to subject all members of the investing public to identical market risks.

As the SEC stated in its recent brief in the matter of Investors Management Co., Inc., et al., Administrative Proceeding File No. 3–1680 (1969):

> One of the major factors, indeed perhaps the most determinative in deciding whether a particular fact constitutes material information is the importance attached to the information by those who knew of it. Nothing demonstrates the clearly material nature of the information than the fact that the respondents, after receiving it, sold and sold short.

And what did Judge Haynsworth do, he bought 1,000 shares of Brunswick stock at $16 per share on December 20, 1967, when the court's opinion was not made public until February 2, 1968.

The Justice Department claims that in this case, chattel mortgages on only 10 bowling lanes and pinsetters were involved. And that the question of whether the landlord's lien took precedence over the Brunswick chattel mortgage affected only one bowling establishment in the State of South Carolina. On these facts, it is claimed that the court's ultimate decision was not material and had little if any effect on the price of Brunswick's stock.

However, how many similar cases would have brought if the landlord had prevailed?

How did a fourth circuit opinion affect potential litigation throughout our other judicial districts? We will never know.

Was Judge Haynsworth's knowledge of a pending judicial decision material insider information required to be disclosed under the Securities Exchange Act? That is a question for the SEC or a Federal court to decide.

It is a matter which should not be brushed under the rug or ignored. No matter what we have been told by Judge Haynsworth's supporters, judges are not exempt from the provisions of our Nation's securities acts.

The lament that at the time of his purchase Judge Haynsworth inadvertently forgot that a formal opinion had not been filed hardly seems worthy of discussion. To coin an old axiom: Ignorance of the law is no excuse. But Judge Haynsworth's conduct is even less excusable if we look at the judicial temperament of the time.

During 1966, in the Federal District Court for the Southern District of New York, the Securities and Exchange Commission successfully prosecuted the *Texas Gulf Sulphur Case*, 258 F. Supp. 262 (1966). This case was the most widely publicized and discussed SEC case of our times. It is the landmark judicial decision on the use of inside information.

In September 1966, immediately after the district court's decision, an appeal was filed before the U.S. Court of Appeals for the Second Circuit. Oral argument was held on March 26, 1967. Although a decision upholding the SEC was not published until August 13, 1968, it is inconceivable that the chief judge of the fourth circuit court of appeals was unaware as to the facts of a case which was pending in a neighboring circuit, especially one of such far-reaching importance. In December of 1967, he should have at the very least been fully aware of the pitfalls involved in purchasing Brunswick stock under these most unusual circumstances.

The very fact that Judge Haynsworth purchased Brunswick stock shows a clear lack of judicial temperament and sensitivity. It shows that he is unaware as to the need for propriety in judicial conduct.

As I have previously stated, Judge Haynsworth has also demonstrated some of the most regressive judicial thinking in at least two areas vital to the majority of America—the areas of labor and race relations. However, in these areas, if this is the kind of judge President Nixon wants on the Supreme Court, that is his prerogative as President of the United States.

But, Judge Haynsworth's financial dealings are another matter. His purchase of Brunswick stock in the light of all available facts demonstrates a complete lack of sensitivity, both to the law and to his own sense of ethical propriety. He has, in my opinion, failed to meet the test both in substance and appearance of unimpeachable propriety that the American people have a right to expect in all Judges; certainly in the members of the Supreme Court of the United States.

I shall, therefore, vote against the confirmation of Judge Haynsworth's nomination.

Mr. THURMOND. Mr. President, the U.S. Senate, as we know, in theory and practice constitutes the greatest deliberative body in the history of man. And yet I have often been reminded in the debates here of my practice as an attorney and my service as a circuit judge, for the Senate at such times closely resembles a court of law. The President of the Senate occupies a position comparable to that of a judge, for it is the primary responsibility of both to maintain order and compliance with the rules of procedure. Appearing before him are those who advocate various positions both for and against the issues at hand and then there are those members of this distinguished body who remain uncommitted to either side until the vote is cast, and therefore constitute a group much like the jury.

Today the analogy is particularly appropriate for the President now presides, the proponents and opponents are here and the uncommitted sit, listening and watching as the record is compiled and arguments are made. What makes this analogy particularly apt is that a man stands before us accused.

Mr. President, at the fountainhead of the American system of justice there are certain precepts. One of these rules is that no ex post facto law shall be passed. That is to say that no one will be tried for a crime which did not exist at the time the act took place which forms the basis of the prosecution for such crime. Such a thing is expressly prohibited. It would seem that the tenets of basic fair play would dictate that no man should ever be accused and convicted of crimes that were created for the purpose of finding him guilty of them.

Another canon of our system of jurisprudence is that one is innocent until proven guilty, and that guilt must be based on a foundation of proof, not suspicion or even evidence, but proof.

Mr. President, those who have raised their voices against the nomination of Judge Clement F. Haynsworth, Jr., have disregarded these elementary rules of justice as practiced by free men, and have adopted procedures altogether foreign to those systems of justice, equity, morality, and fair play generally recognized as natural and right.

So the parallel between this body and the court ends. The rules which are urged upon us and the logic which is followed by the opponents of this man are strange and foreign to us, and they change their complexion with each shift in the direction of the winds of opinion. However, those of us who are the proponents of the confirmation of this nomination accept the challenge of those who are on the negative side, and we shall go forward with the burden of proof.

Let us examine the charges that have been so easily leveled by those whose greatest concern may not in fact be with ethics and philosophy, but with the fact that a balance may be achieved on the High Court and that men with analytical minds instead of advocates of emotional "causes" may find their way to the bench. He has been accused of the high crimes of "insensitivity," and "lack of appearance of propriety." Indeed, he has been libeled as a man whose ethical and philosophical predispositions preclude any consideration of his nomination. However, all these charges are systematically and succinctly squelched in the majority opinion reported by the Judiciary Committee, and I shall not reiterate in detail each of these charges and countercharges.

I am surprised that these experts on ethics have not examined, for the sake of comparison if nothing else, the "ethics" and "sensitivity" and "appearance of propriety" of those who now occupy that bench located in that cold stone edifice across the way behind the marble image of blind justice.

The opponents have chosen not to compare the conduct of this man with the conduct of his peers or with the conduct which is prevalent in the judicial community, but have preferred to make unsupported charges and headlines. The theory of the attack apparently being that it is not necessary to pay attention to the rules of justice or evidence or proof or even to give lipservice to concepts such as the ones that support the ex post facto prohibition because all that one has to do to make a statement true is to say it, and to say it long and to say it loud. Yes, apparently that is all that is necessary—to say it long enough and loud enough—

and someone will believe it. How many times have we seen that technique used to blind and poison the minds of men to the truth? How many times must we repeat the mistakes of history?

This allegation of "insensitivity" is a vague notion at best. One of his accusers says "his decisions indicate a consistent insensitivity to the rights of individuals recognized to be within the realm of the law." Another has said "men sensitive to the many ethical problems which often arise" are needed on the Court and it is further alleged that the Court should be provided with "insights and sensitivities that will make the whole Court even greater than its parts." One, in language befitting a bureaucrat, states that the judge's record has been "blemished by a pattern of insensitivity to the appearance of impropriety" and then one other critic, perhaps accidentally, gives us a glimpse of what may be the true basis for the opposition when he states:

> The requirement that a Supreme Court nominee possesses character beyond reproach contemplates not only an absence of actual wrongdoing but also an image of impeccable rectitude and a reputation which is not subject to reasonable doubt.

Politicians and those motivated by political considerations are often concerned with the matter of "image."

Sensitive—yes, sensitive, Mr. President. Webster's Dictionary defines the word sensitive as "receptive to sense impressions; subject to excitation by external agents; exhibiting irritability; highly responsive and susceptible."

Sensitive—do these people want a man or a nerve ending? I would like to point out that it is not a crime to lack any of these so-called "qualities," and nowhere has the prosecution produced one shred of evidence that this man is "insensitive." They just said he is. They have yet to show that he is. Of course, never has any nominee to the Supreme Court of the United States been required to fit within the definition of sensitivity. And so this charge constitutes nothing more than smoke—smoke designed for camouflage and deception.

Mr. President, I might point out at this time that amoebas and parameciums are "sensitive." If you prod them with an electrical current or pin they will respond, and perhaps this is the ideal of those who oppose Judge Haynsworth. Perhaps they just want someone on the Bench who will jump everytime some pressure group turns on the current.

These are the charges, none of which are punishable under the laws of God or man or which constitute an offense against any code of ethics, conduct, or morals by which the nominee is to be judged, and are as meaningless as the insensitivity allegations.

They say that this man lacks "the appearance of propriety." What a fine cloud of smoke and meaningless double-talk that is. This charge should be given as much credence as the charge that he parts his hair on the wrong side of his head.

Propriety, Mr. President, is defined as "the quality or state of being proper," and proper means being marked by suitability, likeness, or appropriateness. Judge Haynsworth certainly is a man suitable for the position for which he has been nominated. His record as an attorney and as a judge bear this out and directly challenges and refutes the allegation that he is not qualified and suitable for this high office.

Judge Haynsworth was born in Greenville, S.C., in 1912. He attended the schools there. He graduated from Furman University in 1933 summa cum laude, with highest honors. He graduated from Harvard Law School in 1936. From 1936 to 1953, he practiced with the firm of Haynsworth & Haynsworth; a firm established by his forefathers and he is of the fifth generation of distinguished and illustrious lawyers who bear that name. Two years of that time he served in the U.S. Navy during World War II. For 2 additional years he served with the Regional Wage Stabilization Board. From 1953 to 1957 he practiced with the firm of Haynsworth, Perry, Bryant, Marion & Johnstone.

Judge Haynsworth's firm expanded and became the largest law firm in South Carolina. It was known over the Nation as one of the most reliable, one of the most capable, and one of the best.

In 1957, Judge Haynsworth was appointed to the circuit court of appeals. He is now its chief judge. His record speaks for itself. He has made an able and a scholarly judge. He has handed down decisions which no fair and just and honorable man should oppose. The decisions of Judge Haynsworth during his term on the court demonstrate that he is a jurist whose judicial mind does not reside at either extreme of the spectrum but his treatment of various issues of law presented before him have been balanced. Let us be reminded at this point that the scales of justice are balanced and are not artificially weighed in favor of either the right or the left but are even and balanced. So we find Judge Haynsworth's decisions and his judicial philosophy to be balanced and even.

Upon the basis of my personal knowledge of this gentleman—and I know personally firsthand of his great ability as a lawyer and as a judge for when I was a circuit judge he tried cases before me—I can say that he is one of the finest lawyers in the country. He is a gentleman. He is a scholar. He has been a distinguished chief judge and a member of the fourth circuit court of appeals. His has certainly been a distinguished career and at no time has anyone cast aspersions upon his character, reputation, and ability until the attack against him was launched last September.

Why are these charges made? Ostensibly, they are made because this man committed certain unethical acts—acts which, until this man was nominated, were not unethical and which have risen to the ranks of major felonies, if one is to believe the newspapers.

A great harangue has been heard in the land that centers around several cases in which Judge Haynsworth appeared to have an interest. This matter has been disposed of in the majority report, and I call your attention to that discussion—a discussion that carefully marshals the arguments and concludes on the basis of statutory and case law, the canons of ethics, and the testimony of experts that no behavior deserving of reproach can be affixed to Judge Haynsworth's activities on the bench. In fact, the report shows clearly that he did in each case what was right and what he was required under law to do. If the law said he was to sit on a case, he followed the dictates of it, and he sat and heard the case. One of the greatest sins a man can commit, I think, in public life is to give a man a job and then accuse him of doing it.

Judge Haynsworth did his job—he sat when he should have and he decided his cases as a fair-minded man who believed in the law and the Constitution and who followed the ideal that a judge should be responsible and not radical, and that he should base his decisions on the law and not on some whim or fancy, a man who should accept his duty to adjudicate and not litigate.

The issue of Judge Haynsworth's judicial philosophy has been raised.

The controversy centered around two areas of decision: civil rights and labor.

Mr. President, this part is dealt with in the report and treatment there is more than adequate. However, I would like to point out that the essence of the allegation in the civil rights area is that Judge Haynsworth is unsympathetic to minorities and dedicated to continuous segregation of public facilities. Anybody who is familiar with Judge Haynsworth's decisions on the bench know that is not true. A handful of cases have been chosen by the proponents of this position and it is claimed that on the basis of these cases one is to conclude that the judge is a bigot. Compared with the 16 cases cited in the majority report in which Judge Haynsworth ruled for those claiming a denial of their rights, the charges pale and fade away, leaving only a specter of smoke.

During the hearings before the committee, I was struck by the fact that the proceedings seemingly were divided into two parts. The first part being the presentation of objective and well reasoned analysis of the conduct and decisions of Judge Haynsworth and the second part resembled a bargaining session. During the second phase, witness after witness came and talked and talked. They all said the same thing, I presume, on the theory that the more often they repeated the same thing and the longer they said it, the more smoke they could generate then perhaps the more people they could convince they were right just by the fact that they were saying it. During this part the AFL–CIO loudly and pompously voiced their objections to the nominee. A handful of labor cases were dragged out and dissected. They did not bother to mention the 43 or so cases in which the nominee ruled in favor of labor. These cases are listed in the report, and they offer mute but compelling witness to the lack of support in fact of the position of Mr. Meany and his entourage of associates. As a matter of fact, the AFL–CIO counsel Thomas Harris admitted that he had not even attempted to look at all of Judge Haynsworth's labor decisions, and yet they would dare to insult the integrity, intelligence, and competence of

the committee to see through their arguments and discover them to be without foundation.

Perhaps these elements are to be reminded that when you appear as an advocate for a cause and you are arguing the law, it is your ethical responsibility to argue the full case, giving both sides of the law and showing wherein lies the rightness of your case. You are not to hide cases which may go against your particular opinion. This reminds me of another rule of law, Mr. President, that rule in equity which says that those who seek equity must come into the court with clean hands.

All these charges which have appeared in the testimony and the so-called bill of particulars and in the newspapers have been dissected and destroyed, so nothing is left but smoke. Of course there are those who would say, and have in effect said, that where there is smoke there is fire, and therefore we should convict on the basis of what may be, or what might have been, and not on the basis of what is.

This is indeed strange logic, when men argue that you should believe what they say and not what you see.

Mr. President, is there any man here who is so unacquainted with the law, that he would actually undertake to go into any court of law in this land with a case as flimsy as the one against Judge Haynsworth, After all, how could he? There is no cause of action.

Mr. President, let me pose another rhetorical question. Is there any man in this body who actually believes that the real issue here is one of ethics? If ethics is really the question that troubles the opponents why have they not carefully examined the ethics of every man on the Supreme Court today? Why have they not explored the records of every man on the Federal bench in this country? Why? Why have they not?

They may counter this question by saying that the Federal judiciary system is not on trial, but is it not on trial? Of course it is.

In a letter to Senator EASTLAND of September 3 of this year concerning the question of possible conflicts of interest when a judge had an interest in a third party which in turn had business relations with a party in the case, after saying that such a judge was not "disqualified" for interest Prof. John P. Frank said that any contrary result would lead to impossible consequences.

This was a prophetic remark, for impossible consequences are asked here by those who argue contrary to the law in this area. If you subscribe to the logic of those who argue contrary to Professor Frank and the law, then you must try the entire judiciary here and now. You cannot pick out one candidate and hang him—you must apply the new logic and the new rules to all, albeit, ex post facto. This has not been done, and that belies the fact that the real issue is not ethics.

The issue is clear and simple. The issue is who shall determine the policy of this Nation? Shall it be the U.S. Congress, or should it be the labor bosses? Who decides, the people, or those who lust for power? Mr. President, it was 40 years ago that the same type coalition that now fights Judge Haynsworth denied a seat on the bench to an eminently qualified man, Judge John J. Parker. That was a mistake, and labor later admitted that it was a mistake. It will be a tragic mistake if it happens again, for never again shall the President be able to exercise the freedom of choice that he has exercised throughout the Nation's history in selecting nominees for the Supreme Court.

Let it be known that the Senate decides whether consent shall be given a nominee, and not any pressure group.

Mr. President, let us not get ourselves in the situation where the President's nominees shall be sent through a clearinghouse of labor and minorities. We need no unofficial "second senate."

Regardless, Mr. President, of which way this historic vote goes, those of us in this Nation who still believe in the Constitution and in the wisdom of our forefathers and the basic natural rightness of our system of justice shall still be here. We will not be defeated. We will be disgusted, yes, but not defeated; disappointed, but not destroyed.

In this day of strife and turmoil, terror, and tension, there are still those who seek a government of law, not men, a government based on reason and rationality and not radicalism or rebellion.

Mr. President, there are millions of Americans who are watching silently while we debate—watching silently, but not deafly nor blindly. They warned us in 1968 that a vast majority of the people in this country were tired of the so-called "liberalism." They said it at the ballot box, and they said it loudly and clearly, although wordlessly. Mr. President, we must heed that message. There is a mob in the streets, a mass of mindless, screaming militants. We have a choice, and that choice is here now before us today. We can listen to the silent majority, or we can listen to those who would have us abide by the rule of force—the rule of force that dictates he who screams the loudest is right. The argument has actually been proferred that just because certain issues of ethics and philosophy and propriety and sensitivity have been raised and because these points have been loudly and forcefully made, that fact alone dictates that this man must be voted down.

When one decides in favor of those who scream the loudest, or who use the greatest force, one is subject to mob rule, which means that all reason has been tossed to the wind.

Here in this Nation we regrettably are called upon to determine the policy of this country on the basis of the screams and shouts of the mobs in the streets; on the basis of groups who threaten to blow up buildings, and in fact, do; on the basis of screams of the advocates of anarchy. They endeavor to make a mockery of our courtrooms and our system of justice. We are called upon to advocate the causes of those who throw down the flag of this country in favor of that of our enemies.

Mr. President, let us now allow this same philosophy to permeate this debate. Let us not participate in the destruction of our Constitution through our courts.

We do not have to go back far in history to recall that there were those in this country who for various reasons sought to change the structure of our Nation. They attempted to do that through the Congress but that venerable body would not yield up the truths of our founders easily and so they turned their eyes to the Court. They knew, of course, that the judicial system is the backbone of this American system of government for it is there that the citizen seeks to redress his grievances and enforce his rights. They were successful in their efforts. They put men on the bench who were more concerned with legislation than litigation and with being advocates than advisers. Thereby, the whole structure of our system was threatened. When the spine of this democratic Republic was weakened the body politic was visibly weakened and sagged sadly. The criminal was turned loose and crime ran rampant in the streets. They were more concerned for the criminal than the citizen; the internal security of this Nation was threatened when aid and comfort was given to the agents of our enemies. The foundation of the Federal Republic was eroded when the sovereignty of the States was stricken in favor of what they call "democracy."

We do not wish to put advocates of a cause on the bench. We want men who will give a balanced and even treatment to each and every case which comes before them, and this is why we favor this man.

Mr. President, I have a number of letters from various people which I wish to read at this time. These letters graphically demonstrate the essence of the feeling of the silent majority across this land who stand and watch this deliberation. They watch and wait to judge us, as we judge.

Mr. President, it is very impressive to receive letters from people from a man's hometown who have known him all of his life, who have known his reputation, his character, and his family.

I received a letter last October from a man who lives in Greenville, S.C., the hometown of Judge Haynsworth. He took it upon himself to write a number of Senators concerning this nomination and to give the Senate the benefit of his thoughts.

I realize that many Senators, Mr. President, have received a great amount of mail on this nomination along with the regular bulk of mail that they receive in their office each day and perhaps they did not get to read this communication. Since I think that it is important that we have the benefit of the ideas of people from Judge Haynsworth's hometown, I would like at this time to read parts of this letter:

> Haynsworth won't characterize his philosophy, but I will attempt it. He believes that all men are the creation of God and, therefore, special, and he believes that the United States Constitution is the closest approximation of a guaranty that all men are so treated and that the Constitution was intended to be properly amended by the people, not twisted by the Supreme Court. He listens equally to the big and the rich as he listens to the small and the poor, but only equally.
>
> Make no mistake about it, if Haynsworth is seated, you and I will both be on the small

end of some of his decisions—when our position runs counter to the Constitution.

Mr. President, I have received a letter from a gentleman in Connecticut. He bases his opinion and support of Judge Haynsworth on the fact that he feels that the judge is a man of high caliber, a loyal American, a discerning individual, and a gentleman. How true this statement is. There are so many adjectives and phrases that can be used in the praise of Judge Haynsworth and unfortunately some of them have been grounded during the great melee that has been swelled up over this nomination but the people, the people across the country, have been able to see through the smoke and the haze that has been created by the opponents of Judge Haynsworth by innunedo and inference as this letter so clearly indicates.

Mr. President, I am going to read this letter. I think it is indicative of the kind of support we can find from our friends in the great State of Connecticut:

September 9, 1969.

Hon. STROM THURMOND,
U.S. Senate.

DEAR SENATOR THURMOND: In regard to the appointment of Judge Clement F. Haynsworth, Jr., to our Supreme Court, Judge Haynsworth is a man of high caliber, a loyal American, discerning, and a gentleman.

Mrs. Seward and I would like to see Judge Haynsworth appointed to the Supreme Court. We hope you will favor and vote for his appointment.

Best regards.

Sincerely,

EDWARD SEWARD.

P.S.—I have an idea you recommended this to President Nixon. Thank you.

As we move across the country looking at these letters from virtually every State in the Union, I find a handwritten one from a gentleman who lives in Chicago.

This man is concerned with patriotism and he is concerned with the Constitution of the United States. There are many citizens, Mr. President, who are concerned with our Constitution and who stand up for it and who feel that we must preserve it in order to maintain this great Republic which is so unique in the history of mankind.

There are many people in this country who believe that Judge Haynsworth is a man of great integrity and intelligence and one who believes in the Constitution of the United States and this citizen is one of them. He urges us to support this confirmation.

Mr. President, I would like to read the letter of this citizen from Chicago:

CHICAGO, ILL.,
November 7, 1969.

DEAR SENATOR THURMOND: God Bless you for your many patriotic stands in the Senate of the United States.

I am for Haynsworth because of his intelligence and integrity and his belief in the U.S. Constitution.

God help us if the smears of Bayh and his ilk have their way.

Thank you again,

Sincerely,

PRESTON H. WALTERS.

Mr. President, not long ago I received a letter from a gentleman who is a retired naval officer who operates a company here in Washington. Along with his letter he sent a copy of an article sent out by Mr. Thurman Sensing, executive vice president, Southern States Industrial Council.

Mr. Sensing's article gives us his viewpoint of this matter and apparently the viewpoint of the members of his organization. I would like to read into the RECORD at this time for it may be beneficial for the Members of the Senate to hear Mr. Sensing's thoughts.

THE BRETWALDA CORP.,
Washington, D.C., October 9, 1969.

Hon. STROM THURMOND,
Senate of the United States,
Washington, D.C.

DEAR SENATOR THURMOND: I have the honour of attaching herewith an article "The Ordeal of a Judge" written by Thurman Sensing, Executive Vice President, Southern States Industrial Council.

It occurred to me that this excellent article would interest you and that you might be able to insert it in the CONGRESSIONAL RECORD, Senate Appendix.

The Bretwalda Corporation has the honour of being a member of The Southern States Industrial Council.

Very truly yours,

HOMER BRETT, Jr.,
Commander, USNR, Ret.

THE ORDEAL OF A JUDGE

It is the right and duty of the U.S. Senate to give careful scrutiny to nominations for the federal bench, especially in view of past disclosures concerning the activities and associations of former Supreme Court Justice Abe Fortas. But there is a difference between careful scrutiny and an unconscionable smear, and the latter is the treatment that Senate liberals reserved for Justice Clement F. Haynsworth, Jr., President Nixon's second appointee to the U.S. Supreme Court.

Judge Haynsworth, who has been on the Fourth U.S. Circuit of Appeals for 12 years, is noted for his integrity and dignity. He proved the former and displayed the latter during the long and often ugly hearings in which he was abused.

The abuse directed at Judge Haynsworth was only partly directed at the man himself. As the judge no doubt understood, his critics in and out of the Senate were really trying to hit at the region where he was raised and, beyond that, at the type of distinguished, fair-minded, successful man he is.

Judge Haynsworth is a model of the type of American who has built up and maintained the traditions of the American judiciary at its best. He is a man of manners and good breeding, calm and restrained in his judgments, an accomplished lawyer, a success in private business—in short, respectable, dignified and not given to participating in rough and tumble political crusades. This is the type of man good citizens should want on the Supreme Court of the United States. This is the type of man who hasn't been favored in recent years.

The opponents of Judge Haynsworth were enraged because they weren't getting another rigid-minded political partisan to succeed Abe Fortas.

The union leaders and militants have had their way for years. They saw the Warren Court packed with men who were personally committed to political dogmas and specific protest organizations. Big Unionism and the advocates of social revolution don't want judges on the Supreme Court; they want advocates of liberal causes. For too long they have had their way.

The unions got their man on the court when Arthur Goldberg, former special counsel of the AFL–CIO, was appointed to the Supreme Court. The NAACP got its political reward when Thurgood Marshall, its general counsel, received a place on the nation's highest judicial body.

The activist judges brought the Supreme Court into disrepute. Americans as a whole saw in the Warren Court a political arm of those forces attempting a massive political reconstruction of the United States. Thus President Nixon sought out men who would serve on the Supreme Court as judges, not partisans. The liberals weren't happy with the President's nomination of Judge Warren Burger as Chief Justice, but they didn't feel themselves strong enough to attack him.

In the case of Judge Haynsworth, the liberals decided they could hang him with his regional background—the fact that he was a Southerner. It seems that a liberal can forgive someone for almost anything except being a Southerner who hasn't turned his back on the South and on the U.S. Constitution as written.

The liberals further concluded that they could use against the judge the fact that he was a man who had shown ability in his personal business dealings, as though success were a crime and not a sign of achievement.

The people in this country who are out to destroy free enterprise and constitutional government hate the Haynsworths of the land, the men who have real achievements to their credit and who have made a mark in life.

It is not hard to imagine what kind of country we would have if all judges in future were men drawn from the ranks of political propagandists and militant agitation groups—and men of proven competence and personal substance were excluded from the judiciary. The free enterprise system would meet a sudden death in the courts. And that, of course is one of the chief goals of the New Left agitators and their liberal sympathizers in the Congress and the liberal news media.

What really lies behind the attacks on Judge Haynsworth is hatred of the capitalist system and of the constitutional system that nourishes it for the benefit of future generations. Judge Haynsworth is simply a convenient target for those who are determined to prevent the federal courts from returning to the strict impartiality that the founding fathers intended the courts would uphold and practice.

Mr. President, last Monday there appeared in the Evening Star, which is, as you know, a newspaper published here in Washington, a number of letters concerning Judge Haynsworth.

The authors of these letters reside in different States and their communications to this newspaper bears witness to the allegation that I have made that this man's nomination enjoys widespread support. It is for this reason and for the wisdom of their thoughts that I ask unanimous consent to have the letters printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

[From the Washington Evening Star,
Nov. 17, 1969]

SIR: After reading all the pros and cons regarding the Haynsworth nomination, I draw the following conclusions:

(a) The liberals are out to "get" Haynsworth in retaliation for Fortas;

(b) Judge Haynsworth's biggest sin was to be successful as a first-rate capitalist. He had an excellent stock broker or his judgment in the stock market was excellent.

Since when is it a sin under the American system of so-called free enterprise, to make money in the stock market on intelligent investments. In my book, this would doubly qualify him as a man having the most discerning judgment.

The liberals want to tear down the house because they can't run it.

ALICE DEISROTH.

SIR: Every American must be clear as to what is at stake in this vote.

It is not the ethics of the justices of the Supreme Court. Everyone in Washington knows that is a smokescreen. The clearest proof lies in the fact that most of those who are leading the fight against Haynsworth were perfectly willing to accept Abe Fortas as Chief Justice only one year ago. They were willing to swallow the camel, Fortas, and they choke on the gnats that * * * labor union researchers have been able to dig out after the most thorough and painstaking search of Judge Haynsworth's financial records. They did not even ask to see the records of Justice Fortas!

The fact is that compared with Fortas and at least one of the Justices, now sitting on the High Court, Judge Haynsworth is as clean as the proverbial hound's tooth.

What is at stake is whether or not the President will be able to carry out his promises to correct the ills gnawing at America's vitals. Will he be allowed to place on the Supreme Court men who will make it possible to effectively fight crime? Will he be allowed to name as justices men who will find that the American Constitution does not require that we give unlimited license to pornography merchants? Will he be able to put on the court men who will permit the Justice Department to take effective action against the foreign-inspired and foreign-financed subversive conspiracies that are becoming a serious threat to the continued existence of a free and democratic society in this land of ours?

WILSON C. LUCOM.

SIR: Our senators are a fine bunch to throw stones at Haynsworth. They are not so clean themselves. The judge is lilly white compared to some of them.

MARK J. BENNETT.

ARVADA, COLO.

SIR: Who is it in public service, be it mayor, governor, congressman, senator, Supreme Court justice, cabinet member, the President of the United States, that can lay claim to a spotless record when it comes to the charge of conflict of interest in their personal financial transactions?

Jesus said: "Judge not that ye be not judged—For with what judgment ye judge, ye shall be judged."

SARA S. WOLFE.

KENSINGTON, MD.

SIR: By what authority does the National Education Association have the right to "come out" against Judge Haynsworth? I am a member of NEA. I was not polled—nor was anyone I know—concerning our opinion of Judge Haynsworth. I feel that the NEA is not speaking for the membership at large, but speaking and expressing the opinions of those in the inner sanctum of NEA. I, personally, support Judge Haynsworth's nomination.

RUTH C. WEST.

SIR: How many of our honorable Senators, voting yea or nay on the Supreme Court nominee would submit to an interrogation and examination of their personal and financial affairs and affiliations as the nominee has been subjected to?

RICHARD S. DOVE.

ALEXANDRIA, VA.

SIR: I think that failure to confirm Judge Haynsworth would be the most atrocious act of men supposed to be brainy I have ever heard of.

V. M.

SIR: One can often estimate a man's character and ability by taking a good look at his opponents. Apart from their obvious attempt to embarrass the President, there are several of this coterie who aptly fit the description which that great Democrat, Jim Farley, applied to another Democrat, who at that time, strangely enough, was a Democratic presidential candidate. Farley called him an "over-educated, over-polished version of Don Quixote, Rip van Winkle, and Pagliacci." Too many of our so-called liberals viewing the world from the intellectual heights of their ivory towers, don't know what the score is.

JAMES S. HOLMES.

SIR: It is with great disgust that we the people watch the shenanigans of our Congress in the case of Judge Haynsworth's appointment to the Supreme Court. The malice aforethought shown by those working against him, is worse than anything he could have done.

ESTHER POTEET.

LOS ANGELES, CALIF.

Mr. THURMOND. Mr. President, I have another letter from a lawyer who practices in New York.

He has written a well-reasoned and succinctly worded letter which points out various matters which would be well for the Members of this body to consider. He bases his opinion on a series of points, the first of which is that a most careful study of the judge's record fails to reveal any action on his part that might cast a question on his integrity. He also points out that it would be good to have diversity on the bench and thirdly that it would be beneficial for the country in general if this nomination of the President went through for it would have a cohesive effect.

This is a well-written letter certainly worth our consideration here, Mr. President, and I would like to read it in its entirety to the Senate:

NEW YORK, N.Y., *November 4, 1969.*

Senator STROM THURMOND,
Post Office Box 981,
Aiken, S.C.

DEAR SENATOR THURMOND: I am writing to request your continued support in favor of the nomination of Judge Clement Haynsworth for the presently vacant seat on the Supreme Court.

There are three reasons why I suggest this course. First, a most careful study of the Judge's record fails to reveal any action on his part that casts serious question on his integrity. Second, the interest of the country would seem best served by having a diversity of men on the bench. This principle has already been recognized by the position of other justices who represent the major racial and religious groups who make up the whole of our country. The fact that Justice Haynsworth faces attack primarily because of his alleged political views seems no less discriminatory in nature than would be the case if it occurred for reasons of race or religion. Third, we now have a President in the country who is doing a simply herculean job of trying to heal wounds and to correct problems caused by serious errors made by his predecessors. To be effective in his major efforts of behalf of the country he needs and deserves the support of all citizens.

Sincerely hoping that your efforts on behalf of Judge Haynsworth will be rewarded and that our paths will cross often in South Carolina, I am

Yours very truly,

L. W. SNELL, Jr.

There are a number of lawyers and Senators and historians who are familiar, Mr. President, with the fight just a few decades ago concerning the nomination of Judge John J. Parker to the Supreme Court. As you will recall, this nomination was defeated by one vote.

Lawyers who have practiced law at that time will particularly recall the record that Judge Parker wrote for himself both before and after his nomination and the fact that he was honored throughout the Nation as a leading legal mind.

I have a letter from a lawyer from Richmond, Va., who is apparently a student of this earlier nomination and he has taken his time to write and compare the two nominations.

He points out that in the campaign against Judge Haynsworth and in the Parker matter the opposition used misinformation and misinterpretation.

He also points out that there are many opposing Senators who regretted their action, but it was too late to do anything about it.

I would like to read this letter in order that we might call to mind that earlier mistake by the Senate and trust that we shall learn the lessons of history and not repeat that mistake here:

RICHMOND, VA.,
November 10, 1969.

Hon. STROM THURMOND,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: Just a few decades ago, Judge John J. Parker's nomination to the Supreme Court was defeated by one vote.

Like the pending campaign against Judge Haynsworth, the opposition campaign was based largely upon misinformation and misinterpretation.

During the year following the adverse Senate vote rejecting Judge Parker, many of the opposing Senators ruefully regretted their action, but it was then too late.

I am a staunch Democrat, but if I were in the Senate, I would strongly support confirmation of Judge Haynsworth.

Sincerely,

JOHN J. WICKER, JR.

P.S.: I have been actively practicing law for more than half a century. If desired, biographical information about me can be found in "Who's Who in America"; and political information can be obtained from Senator Harry F. Byrd, Jr., and my Congressman, Dave E. Satterfield III.

Mr. President, I have read letters from many parts of the country and I have one here from the State of California.

I am delighted that this letter was written. This gentleman, in fact, wrote the President of the United States and expressed to him his opinion that it was the faith of the President to appoint men such as Clement Haynsworth to the High Bench and cause them to elect Mr. Nixon to the Presidency in 1968.

Mr. President, there is certainly wisdom expressed in this thought.

I would like to read this letter, a copy of which I received in my office which was addressed to the President for I think it is illuminating:

SAN FRANCISCO, CALIF.,
August 18, 1969.

Hon. RICHARD M. NIXON,
President of the United States,
San Clemente, Calif.

DEAR MR. PRESIDENT: Your choice of the Honorable Clement F. Haynsworth, Jr. as an associate justice to the Supreme Court is most commendable and does much to bring this August Body back to the reality of our times.

It was this kind of wisdom and vision that the people expected from you when you

were elected to the presidency against overwhelming odds, at least in the eyes of those that had not kept abreast of the mood of the general public at large.

Hoping that you will continue to demonstrate this excellent quality of leadership in the future in these troubled times so badly in need of one with your abilities and courage, I remain

Respectfully,

GEORGE MEDINA.

Mr. President, a gentleman from Ashland, Oreg., wrote the latter part of September expressing his support for Judge Haynsworth. This man used the word "honorable" in his letter and certainly that word and its definition is befitting of this fine and able man.

That is a word often used for this man, Mr. President, and he is certainly deserving of the epitaph.

I give you, at this time, the benefit of the thoughts of this gentleman from the great State of Oregon:

HON. STROM THURMOND,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: I have been following with much interest the hearings being conducted on the confirmation of Judge Clement Haynsworth to the Supreme Court. I hope you will use every means at your command to get this Honorable South Carolinian elevated to the Highest Court in the land. After all I think that many able Jurists of the South have long failed to gain the recognition in their chosen field due perhaps to prejudice of many counterfeit politicians.

Wishing you success in your efforts and may you continue to be a credit to the Republican Party and the Nation.

Respectfully yours,

THOMAS R. LOGGANS.

A lawyer from Savannah, Ga., has written me and he indicates that he has talked with a good number of people including judges, doctors, lawyers, teachers, and other people, and the consensus of their opinions overwhelmingly favor Judge Haynsworth with no dissent.

I am very much grateful that this man took his time to write, Mr. President, and he has written this letter on behalf of citizens of Chatham County, Ga., which is a highly populous county in that State, and so this letter forms another link in the long chain of letters that have been received by my office and by many other Senators expressing the support of the great mass of people in this country for this man:

SAVANNAH, GA.,
October 3, 1969.

HON. STROM THURMOND,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: This letter is merely a memorandum from an interested citizen supporting you and your colleagues in the appointment of the Honorable Clement F. Haynsworth to Associate Justice of the Supreme Court of the United States.

In the last few days, I have made an effort to talk with a number of our citizens, including judges, doctors, lawyers, teachers and other non-professionals. The consensus of their opinion is overwhelmingly in favor of Judge Haynsworth with no dissent and furthermore, it is our feeling that he is the victim of a witch hunt. A hunt which has led to nothing that would in any way mar his integrity or the professional esteem reserved for him by our community.

We in the free state of Chatham endorse you in the position you have maintained in regard to the war in Viet Nam and supported President Nixon in the last election and we sincerely hope that the South and our country will be allowed the honor of having Judge Haynsworth serve on the Supreme Court bench.

Sincerely,

JOHN WRIGHT JONES.

Mr. President, one of our friends wrote from Florida expressing the hope that we would support Judge Haynsworth and his nomination.

He was of the opinion that these charges were frivolous and unworthy of consideration in view of his many years of service as federal judge.

Certainly this letter expresses an opinion which if listened to would bring any man to the realization that this nomination is in the best interest of this country and its oppositon is clearly not based upon substantial fact or evidence:

WINTER GARDEN, FLA.
October 8, 1969.

Senator STROM THURMOND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR THURMOND: I hope that you will give your firm support and vote for the nomination of Clement F. Haynsworth to the U.S. Supreme Court. In my opinion the "charges" brought against Judge Haynsworth are frivolous and unworthy of consideration in view of his many years of service as a federal judge.

The real opposition to Judge Haynsworth's nomination probably results from the fact that he is considered a conservative, and his record shows proper judicial restraint with a high regard for the majority welfare in his court decisions. These qualities are desperately needed in our Supreme Court today.

Yours sincerely,

HARLEY TOMPKINS.

Mr. President, I have read letters from lawyers from various parts of the country and now we have another one from an attorney from the State of New York. This man bases his opinion of Judge Haynsworth on the basis of the man's legal and judicial career. As an attorney, he undoubtedly reviewed the arguments both pro and con on this matter and concluded that it would be in the best interest of this Nation and certainly in the best interests of future generations which may live in this Nation for this man to be placed on the bench. Lawyers are very much concerned about the wearing away of the Constitution and we should be for many of the decisions that have been rendered by the Supreme Court are not in keeping with the dictates of that document.

This is another example of another citizen from another State who has expressed himself to the issue and urged that this Senate confirm this nomination.

I am grateful that this lawyer from the great State of New York took his time from his busy law practice to address me and urge my support of Judge Haynsworth.

I would like to read it to you at this time:

NEW YORK, N.Y.,
November 13, 1969.

HON. STROM THURMOND,
Senate Judiciary Committee,
Washington, D.C.

SIR: The purpose of this letter is to respectfully urge that you vote in favor of Judge Haynsworth nomination as Justice of the Supreme Court of the United States. I firmly believe that his outstanding legal and judicial career warrants this favorable action.

Thank you for your consideration in this matter.

Very truly yours,

JOHN J. WILL.

Mr. President, it is pleasing for a Senator to receive mail from his friends at home and it is good to get letters from other States. This tells you how the people are thinking and often gives you some good ideas for legislation.

Many of these people are busy and have only enough time to write a few brief lines, but they do care enough to say what is on their mind. I often receive letters from our friends in the medical profession. You know, doctors cover a wide spectrum of society for they are professional people, they are also business people with an interest in the economy and they meet and talk with a great number of average citizens each week. These men are able to give a good judgment of an issue and it is helpful for them to give their views.

Recently, I received a letter from a doctor in Texas. I would like to read it to the Senate:

With the delay and hassle over the confirmation of Mr. Haynsworth there has never been an argument proving that he is anything but a patriotic, loyal and honest qualified American. We are fortunate to have the opportunity of the service of this rare breed!

I have a letter from a man in Staten Island, N.Y., who has expressed his opinion in favor of Judge Haynsworth.

As you will note as I read these letters, I have received a number of letters from New York as well as from other parts of the country supporting this nomination and I trust that the voice of these people will not be ignored by those who are casting their vote for this nomination.

I would like to read this letter to you, Mr. President, for I think that it clearly expresses, along with the others, the position that our friends in the Empire State have concerning this matter and I am sure that there are many many others across this land who have the same opinion:

STATEN ISLAND, N.Y.
September 13, 1969.

HON. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: President Nixon recently announced his choice of Clement Haynsworth to fill the vacancy in the Supreme Court. His decision took much consideration of the possible men available for this important position.

In this session of the Senate, it will be up to the senators to vote for Mr. Haynsworth's confirmation. It is my firm conviction that the President's appointee is the best choice for the job. His views on important issues are similar to those of Americans who feel the Court should help them, not defeat them.

In these past few years, the Supreme Court has made decisions that were not in the best interests of the country. It is time to reverse this trend. The purpose of this related letter is to let you know, personally, the feelings of many people. I sincerely hope you give this subject much consideration and thought.

With every good wish,

Yours truly,

GEORGE P. VIEGELMAN.

Mr. President, I should also like to read portions of a letter which was written to

me by Francis F. Brooks of Millburn, N.J. Mr. Brooks writes:

The American Bar Association has found the case against him flimsy and lacking in real substance; and, on the contrary, has found him highly qualified on his twelve-year record as a federal judge.

Mr. Brooks also points out:

Certainly, to strengthen the public mandate, the political logic would favor a conservative appointment to the Court, since it has been stacked of late years on the liberal side.

Mr. President, this letter did not come from South Carolina nor from Georgia or Mississippi. This letter was from the State of New Jersey and is but another indication of the broad support Judge Haynsworth's nomination is receiving from all over our Nation.

I have also received a letter from Mrs. Oscar Grabeel of Eubank, Ky. Mrs. Grabeel writes:

Even though I am *not* a South Carolinian I *am* an admirer of the stand you have taken on many important issues in the last few years. The latest of these and of great importance to our entire nation is the confirmation of Judge Haynsworth.

Keep the banner waving high! May God bless you.

Sincerely,

Mrs. Oscar Grabeel.

Mr. President, I have never been to Eubank, Ky.; and although Kentucky may be considered a Southern State by some, it is more accurately a border State and has many interests in common with the Midwest. I have received mail from all over the entire Nation on behalf of this nomination, and I believe this shows the importance of this nomination to many ordinary citizens across this great land.

Another person who has written me about this nomination is Mrs. Bryan W. Steffe of Canton, Ohio. Mrs. Steffe writes:

For some time I have wanted to write you concerning the appointment of Judge Clement F. Haynsworth. Our President could not have made a wiser or better choice for a judge to serve on our Supreme Court. Judge Clement F. Haynsworth is a very fine gentleman.

It is awfully upsetting to hear the unkind and the unfair remarks that many Senators and others are saying about Judge Haynsworth. I believe if they knew him better they would weigh more carefully their accusations.

Surely President Nixon will stand firm in his appointment of Judge Haynsworth. We need a man of his caliber so badly to serve on our Supreme Court.

Mr. President, I have also been written by Mr. W. L. Robinson, who is president of the Fulton County Board of Education in Atlanta, Ga. Mr. Robinson writes:

All phases of our life . . . will be immeasurably benefited by having capable constitutional lawyers on the Supreme Court Bench.

Mr. President, Mr. Robinson, with whom I am not personally acquainted, is obviously a leader in education and is necessarily respected in his community. The support of Judge Haynsworth shows the extent to which responsible citizens all over our Nation are heartened by this nomination by the President.

I received the following letter from Mr. William M. Hagood III, of Greenville, S.C., who is a practicing attorney and who had the good fortune to serve as a law clerk to Judge Haynsworth. This letter was written to me in May, urging that I recommend to President Nixon that Judge Haynsworth be appointed. While it is important that the Senate have the benefit of the views of those persons who are in no position to be biased in favor of the nominee, I believe it is also important that one who has had the opportunity to work closely with Judge Haynsworth thinks so highly of him that he has written me the letter that I now read to you.

Love, Thornton, Arnold & Thomason,
Greenville, S.C., May 29, 1969.

Senator Strom Thurmond,
Senate Office Building,
Washington, D.C.

Dear Senator Thurmond: I would like to request that you consider recommending to President Nixon that he name Judge Clement F. Haynsworth, Jr., to the United States Supreme Court.

You are probably as familiar with Judge Haynsworth's qualifications as I am, although I have had the good fortune to work as his law clerk for one year following my graduation from law school in June 1963. During that time I developed a deep respect for his ability as a judge as well as a deep respect for him as a person.

I have followed with interest articles in various newspapers in which you suggest various attributes that you want to see in the Supreme Court Justice appointed by the President, and Judge Haynsworth has all of these attributes. His integrity is beyond reproach and a review of the decisions written by him, in matters where the Supreme Court had not already decided the precise issue in question, reveals that he believes in the strict construction of the Constitution. One only has to read a few of his decisions, which, incidentally, are written by him and not by his law clerks, before realizing that he is exactly the type of person needed for this high position.

Very truly yours,

William M. Hagood III.

I should also like to read a letter which I received from the president of the chamber of commerce of the State of Louisiana. This man does not write merely as an individual but on the basis of the unanimous support of the board of directors of the Louisiana State Chamber of Commerce. Mr. Singletary's letter represents the thinking of responsible citizens and deserves our careful attention and consideration.

Louisiana State Chamber
of Commerce,
November 12, 1969.

Hon. Strom Thurmond,
U.S. Senate,
Washington, D.C.

Dear Senator Thurmond: At a recent meeting of our Board of Directors, the continuing debate on confirmation of Judge Clement F. Haynsworth as a member of the U.S. Supreme Court came up for discussion.

Upon reviewing some factual information on Judge Haynsworth's background, it appears that much of the publicity opposing his nomination has been exaggerated.

The Board unanimously authorized me to communicate with you and other members of the U.S. Senate and respectfully urge that the nomination of Judge Haynsworth be approved.

Sincerely,

Archie F. Singletary, Jr.,
President.

Mr. President, I also have a number of editorials and newspaper articles which have been written concerning this nomination. I feel that it is important for us to be aware of the thoughts of those men who make their living by observing the political events that take place in this Nation for they often give us insights and viewpoints which are helpful in showing us what are the facts.

The Columbia Record, one of the leading afternoon dailies in South Carolina, has published two editorials on the subject of Judge Haynsworth and the charges against him.

The first, published on Friday, October 10, and entitled "The Liberals' Revenge," discussed the highly prejudiced treatment of the matter by Howard K. Smith, the ABC television commentator. It also points out that the attempt to draw a comparison between Judge Haynsworth and the case of Justice Fortas is totally fallacious.

I read it:

The Liberals' Revenge

While liberals conducted a campaign of what Vice President Spiro Agnew called "character assassination" against Judge Clement Haynsworth, Howard K. Smith reported in gleeful tones on his ABC television broadcast that conservatives of the country were about to get their comeuppance.

Blaming conservatives for the uproar that brought about the resignation of Justice Abe Fortas, President Johnson's choice for Chief Justice, Smith said that Fortas had done nothing wrong. He said that Fortas, by advising the President on Executive matters, had merely given the appearance of impropriety.

And now the conservatives' attack on Fortas on that basis had come back to haunt them, with liberals using the same type of ammunition to defeat the appointment of Judge Haynsworth to the vacancy on the U.S. Supreme Court.

The liberals have not uncovered any scandal on Haynsworth. They have found no conflict of interest in his decisions except in their own far-fetched interpretations of his stock portfolio. They have gone to such extremes as finding a sinister association because Bobby Baker and Haynsworth among many others, once bought shares in a large tract of land.

Smith conveniently omitted the principal charges against Fortas. He overlooked the fact that they resulted from a story in liberal *Life* magazine, not from a conservative expose. He did not say that Fortas accepted a $15,000 fee, raised under questionable circumstances, to lecture to a handful of college students. He did not say that Fortas accepted the first installment on a guarantee of $20,000 a year for life from the Wolfson Foundation while Louis E. Wolfson was facing an unsuccessful fight in the courts to avoid serving a jail term for illegal stock transactions. Fortas returned the money only after the payoff was exposed.

Smith was dealing in half-truths, which are also the deadliest and most indefensible weapons in any vicious campaign of character assassination.

On October 11, the Columbia Record again discussed Judge Haynsworth and pointed out that rejection of this nomination would be a repeat of one of history's darker moments. This editorial discusses a parallel between the situation facing the Senate today and that in which a very honorable man, Judge John Parker of North Carolina, was rejected by the Senate.

The editorial also points out that President Nixon has firmly stood with Judge

Haynsworth and has made clear to the American public and to the Senate the importance the President places on the confirmation of Judge Haynsworth. It reads as follows:

HAYNSWORTH'S FOUL CRITICS

Clement Haynsworth, South Carolinian, may never sit on the Supreme Court as President Nixon wanted him to. He may. The outcome of a senate vote is, at this moment, unknown and perilously close.

Should Haynsworth be rejected by the Senate, he will be the only nominee for Associate Justice to be turned down in this century, with one exception—Judge John Parker of North Carolina. Thus, the only rejectees would be Southerners.

If Haynsworth loses, he will be the victim of character assassination and a totally unfair, intellectually indefensible linkage with Abe Fortas. In an editorial which called upon Judge Haynsworth to withdraw to protect the good name of the Supreme Court, the liberal *Washington Post* called the shots quite honestly.

"For Judge Haynsworth," said the Post, "the situation must be distressing. As far as the general public is concerned, his integrity and honesty have been questioned and he has been labeled an all-out segregationist and foe of labor. Few of the charges made against him, in our judgment, are valid. He has become the focus of a bitter fight, involving partisan politics as well as ideology and ethics, that is not of his own making. Some of the opposition to him is based on honest philosphical differences or sincere concern over ethics. But some of it, while cloaked in these terms, is based on a rather more primitive impulse to humiliate the President.

"Too many unfair questions have been raised and too much politics has been played," the *Post* says. We quite agree, although we do not—under any circumstances—share the Post's overly-easy parallelism with the Fortas affair.

We know not what Judge Haynsworth's final fortune may be. We hope he is confirmed; we are pleased that President Nixon nominated him and has stuck by him, despite the malicious politicking. Whatever be Haynsworth's destiny, we shall not disremember those members of the U.S. Senate who crudely misused truth as a weapon to further their own selfish interests.

Honor and courage are attributes to be admired, in all Americans, including judges and Senators. Honesty and fair play are commendable, ethical guides—abandoned by some of Haynsworth's callous foes. Those members of the Senate will not be allowed to forget that the Senate, itself, has struggled with an ethical code of its own.

One of the outstanding weekly papers in South Carolina, the Chester Reporter, published an excellent editorial on October 22, concerning Judge Haynsworth, the unfounded attacks against him, and the strong stand taken by the President on behalf of Judge Haynsworth.

The editorial points out a most unfortunate aspect of this debate and that is that much of the opposition to Judge Haynsworth appears to be related to his southern origin, a sad state of affairs in this day and age.

The editorial reads as follows:

OFF THE RECORD

Judge Haynsworth: The outcome may still be in doubt but no one can charge that President Nixon has been half-hearted in support of his nomination of Judge Haynsworth to the U.S. Supreme Court. He made this perfectly clear, to borrow one of the President's favorite phrases, when he held a surprise news briefing Monday at the White House.

"I find Judge Haynsworth an honest man, a lawyer's lawyer and a judge's judge," said the President. "I think he will be a credit to the Supreme Court and I intend to stand behind him until he is confirmed."

He called the attacks against Haynsworth, who is chief judge of the Fourth U.S. Circuit of Court of Appeals, a vicious attempt at character assassination and said he would not withdraw the nomination even if requested to do so by Haynsworth himself.

The objections to Haynsworth in the U.S. Senate boil down to the fact that he is wealthy and that he is a native South Carolinian. There is a strong feeling among liberals and organized labor that no one from the conservative South should be elevated to the Supreme Court.

This feeling has found expression in the picayune conflict-of-interest charges made against him by those who professed to be horrified that Haynsworth owned shares in companies involved in litigation of one sort or another.

None of these charges had any real substance. That leaves only the objection to Haynsworth as a South Carolinian and a conservative. But it is enough to cast doubt over the action the Senate will take on his nomination.

Mr. President, the theme that Judge Haynsworth is the victim of prejudice due to his background as a South Carolinian is also discussed in an excellent editorial which appeared in the Charleston News and Courier on Friday, October 24. This editorial points out that Judge Haynsworth should be judged on his record and his ability, not upon his place of birth. I read the editorial:

REGIONAL PREJUDICE

In times past, members of minority groups have faced a wall of resistance in obtaining posts of honor and public responsibility. Louis Brandeis was opposed for the Supreme Court because of his Jewish faith. For decades, it seemed unlikely that the U.S. would have a Catholic as President. Negro citizens encountered severe obstacles.

All that has changed in recent years. Many Southern cities—Charleston is one of them—have Negro citizens as judge and alderman. A black man sits on the U.S. Supreme Court. Other minorities are well represented at all levels of government.

Members of a minority still discriminated against in government are Southerners. They often are treated as outcasts.

President Nixon brought this prejudice into the open in his news conference Tuesday dealing with the nomination of Judge Clement F. Haynsworth of Greenville for the U.S. Supreme Court. The President touched on the real bias behind the campaign to deny Judge Haynsworth a place on the court.

"It is not proper," the President said, "to turn down a man because he is a Southerner, because he is a Jew, because he is a Negro or because of his philosophy. The question is what kind of lawyer is he? What is his attitude toward the Constitution?"

Mr. Nixon thus focused attention on the fact that Judge Haynsworth is being opposed because he is a Southerner.

It is shocking and tragic that at this point in American history sectional prejudice is directed against the South, and that a man of demonstrated ability should be opposed because he hails from a Southern state. We can't imagine South Carolinians opposing a Supreme Court nomination on the ground that the nominee was born in New York, Michigan or California. That kind of biased attitude simply doesn't exist in this region.

As U.S. citizens, Southerners have a right to expect that ancient prejudice against this section will be laid aside in this supposedly enlightened era.

The Senate can prove its freedom from regional prejudice by confirming Judge Haynsworth as an Associate Justice of the Supreme Court.

I have thus far read four editorials on behalf of Judge Haynsworth—all published in my home State of South Carolina; however, editorial acclaim for Judge Haynsworth has by no means been limited to his home State. The following is an editorial from the Daily Oklahoman, which is published in Oklahoma City, Okla.

This editorial points out the importance of creating a balance in the Supreme Court and that much of the fight over this nomination must be related to the opposition of those who favor an "activist" Court. The editorial also points out that Lawrence E. Walsh, chairman of the American Bar Association's Committee on the Federal Judiciary has strongly endorsed Judge Haynsworth and refused to be swayed by the flimsy charges of insensitivity which have been made against the Judge. I read the editorial:

PREJUDGING JUDGE CLEMENT F. HAYNSWORTH

(EDITOR'S NOTE.—The following is an editorial from The Daily Oklahoman published in Oklahoma City).

Judge Clement F. Haynsworth Jr., continues to enjoy the expressed confidence of the persons best qualified to weigh the arguments against him.

The American Bar Association's Committee on the Federal Judiciary reaffirms its support of him after the Senate Judiciary Committee advances to the Senate floor his nomination to the U.S. Supreme Court.

Chairman Lawrence E. Walsh of the bar committee said matters that had come to its attention since its original endorsement of Haynsworth "did not warrant a change in that report." The Senate Judiciary Committee was similarly unimpressed with the conflict-of-interest allegations made by Sen. Birch Bayh and other Senate liberals who have been examining the judge's financial past.

The greater significance of this uproad is not what it testifies concerning the judge's qualifications but what it testifies concerning government of men that has supplanted this country's former vaunted government of laws.

For the overriding concern of the Senate liberals isn't the suggested conflict of interest they aren't able to demonstrate but their fear that Judge Haynsworth's elevation to the Supreme Court will give it a conservative majority.

In short, he is being prejudged on his supposed philosophy. His record as a member of the 4th U.S. Circuit Court of Appeals has brought him into disfavor with the labor unions and the black civil rights leaders, as well as their liberal friends in the Senate.

Oklahoma's Sen. Henry Bellmon notes this aspect, saying that "there has never been a case where the Senate has refused to confirm a man because of his philosophy, and I don't think it should be done now."

Haynsworth, like the new chief justice, Warren Earl Burger, has a reputation as a "strict constructionist" who adheres to settled law. As such, he wouldn't be expected to read more into the constitution than it contained or to bend it to conform to his own personal predilections.

Under the "activist" doctrine of the former Warren Court, the constitution was made to mean just about anything a majority of the justices chose for it to mean.

Thus it became the cited authority for turning the operation of the public schools

over to the federal judiciary. It became the cited authority for giving communists the run of defense plants, for making the confessions of criminals almost impossible to use, for banning prayers, or the reading of the Bible in public classrooms, for holding that a college professor may not be dismissed for teaching or advocating the "abstract doctrine" of forcible overthrow, and for fuzzing up the definition of obscenity to the point where the nation now is being engulfed by a flood of printed and filmed filth that would have been inconceivable a few years ago.

In his often-quoted letter to Jefferson's biographer, H. S. Randall, Lord Macaulay said in 1857 that the U.S. Constitution was "all sail and no anchor." Certainly it has become that if it can be construed to mean one thing to one court and something altogether different to another court.

The present din affecting Haynsworth's appointment reflects liberal fears that a court composed largely of "strict constructionists" would set sail in a different direction.

On Friday, September 5, the Chicago Tribune published an editorial entitled "The Defamation of Judge Haynsworth." This editorial, published not in the South but in one of the Nation's leading dailies located in the State of Illinois, quotes John P. Roche of Brandeis University and former chairman of the ADA as follows:

Haynsworth's record . . . was examined with a microscope and, as far as any critic could discover, he has never called for the restoration of slavery, for legalization of torture, or for the abolition of the Federal Government.

The editorial reads as follows:

THE DEFAMATION OF JUDGE HAYNSWORTH

Professional "civil rights" agitators, labor leaders, and "liberal" columnists have launched a massive propaganda campaign against confirmation by the Senate of President Nixon's nomination of Judge Clement F. Haynsworth Jr., of South Carolina, to be a justice of the United States Supreme court.

Judge Haynsworth is opposed mainly by the same forces that defeated Senate confirmation of President Hoover's nomination of Judge John J. Parker, of North Carolina, for the Supreme court in 1930. Judge Parker was chief judge of the United States Court of Appeals for the 4th circuit, of which Judge Haynsworth has been chief judge since 1964. The National Association for the Advancement of Colored People, the labor unions, and other "liberal" elements attacked Judge Parker as a "reactionary," but some liberal senators who voted against him, notably Borah of Idaho, Wheeler of Montana, and La Follette of Wisconsin, praised him in later years.

Judge Haynsworth has been called a "hard core segregationist" by Joseph L. Rauh Jr., vice chairman of Americans for Democratic Action and prime mover of the Leadership Conference on Civil Rights. Roy Wilkins, executive director of the N. A. A. C. P., has issued a manifesto charging that the judge "has been reversed four times by the United States Supreme court in civil rights cases" and is a "partisan of racially segregated public education."

These pillars of the liberal establishment looked pretty silly when John P. Roche of Brandeis University, former White House intellectual in residence and former national chairman of the A.D.A., came to Judge Haynsworth's defense. Roche remarked that Haynsworth "hardly looks like a red-neck segregationist from the piney woods" and added: "Haynsworth's record . . . was examined with a microscope and, as far as any critic could discover, he has never called for the restoration of slavery, for legalization of torture, or for the abolition of the federal government."

George Meany, president of the AFL–CIO, and some of the liberal columnists are attacking Judge Haynsworth solely on the basis of an alleged "conflict of interest" in a case decided by his court. The judge owned 15 per cent of the stock of the Carolina Vend-A-Matic company, of which he also was an officer and a director. While grossing about $3,000,000 a year, this company received $50,000 a year for the use of its vending machines in the plants of the Deering-Milliken company, a large textile manufacturer.

In August, 1963, on the basis of competitive bidding, Deering-Milliken awarded Vend-A-Matic a second $50,000-a-year contract but turned down two other Vend-A-Matic bids. In February, Judge Haynsworth's court began considering an unfair labor practice charge against the Darlington Manufacturing company, a Deering-Milliken subsidiary, and in November, 1963, Judge Haynsworth wrote the court's opinion in a 2 to 1 decision in favor of Darlington.

Thus the only question is whether 15 per cent ownership of a company that received less than 2 per cent of its gross income from a company which had a subsidiary involved in the litigation amounted to a conflict of interest.

In 1964, when Carolina Vend-A-Matic was purchased by ARA Services, Inc., Judge Haynsworth promptly sold the ARA stock he received for his interest in Vend-A-Matic. He said it might be all right for a judge to hold an interest in a small, local company but not in a national company doing business all over the country. Altho he received $450,000 for his ARA stock in 1964, it is worth more than $1,400,000 today.

The truth, it appears, is that the liberals are against Judge Haynsworth because he is a "strict constructionist" who applies the Constitution as it is written. The liberals believe the Constitution is made of rubber and can be stretched to accommodate their vision of a socialist welfare state.

Mr. President, the Times-Dispatch of Richmond, Va., published an excellent editorial entitled "Haynsworth Critics Err." This editorial points out how Judge Haynsworth's critics have been highly selective in attempting to create the impression that Judge Haynsworth is anti-labor and a segregationist. They have pointed to the cases which fit their criticisms but have totally ignored those cases which run counter to their theories.

I read the editorial as follows:

HAYNSWORTH CRITICS ERR

Judge Clement Haynsworth may not be a saint. But in their efforts to depict him as a sinner, his critics have been bending over backward to convict him on the flimsiest of evidence.

In their continuing campaign to show that Haynsworth has been guilty of a serious "conflict of interest," his critics recently offered a "bill of particulars"—charging that the judge had a substantial financial interest in five companies involved in litigation before his court.

The bill of particulars was completely in error on two of the five cases; Haynsworth had no financial interest whatsoever in the companies. In one of the cases he had owned a single share of stock worth $21, and on which he had received a total dividend of 15 cents—but, he sold the stock four years before the company was involved in litigation before his court.

In only two of the cases did Haynsworth own any stock in the companies at the time that they were involved in litigation before him. Actually, he bought stock in one of the companies after its case had been decided in his court, but before the decision was formally announced—an action which he admits was a mistake, though hardly a monumental one.

For that decision, if it had any effect at all on Haynsworth's financial interest in the company, would have resulted in a potential profit of no more than $4.92 for the judge. In the second of these two cases, the effect of the decision may have amounted to a potential personal loss of 48 cents.

This is hardly the stuff which makes for a serious conflict of interest. At best, the charges are petty, if not utterly absurd.

The conflict of interest attack against Haynsworth—and the rather vicious attempt to link him with Bobby Baker because the two of them, unbeknownst to each other, happened to have invested in what apparently was a perfectly legitimate business venture some years ago—appears to be pretty much of a smoke screen which his critics have been using to cover their real motives for opposing his appointment to the Supreme Court.

Their basic reason for opposing Haynsworth seems to be his relatively conservative judicial philosophy and his record as a "strict constructionist." But even here, some of his critics have badly distorted the picture.

Carefully picking and choosing, they have cited a handful of cases in which he ruled against labor unions to hang an "anti-labor" tag around his neck. But the complete record shows that in roughly three out of four labor-management cases he has sided with the unions.

Again being highly selective, some critics have attempted to depict Haynsworth as a "segregationist." But even the Washington Post has dismissed this charge as ridiculous, pointing out that while he hasn't broken any new ground in civil rights cases, he has never failed to uphold integration once Congress or the Supreme Court wrote a law or set a precedent.

"It is true that Judge Haynsworth has not been a crusader," Sen. Harry F. Byrd said last week in announcing that he will vote to confirm the nomination. "But to my way of thinking crusading is not a proper judicial function."

That is one of the main reasons why President Nixon nominated Haynsworth in the first place. And in view of the flimsy and distorted campaign which has been waged against the appointment, the President was well advised to reiterate on Monday that he has no intention of withdrawing the nomination.

Unless his critics can produce more substantial evidence than they already have to justify rejecting him, Haynsworth's appointment should be confirmed by the Senate.

A number of well-known national columnists have spoken out strongly on behalf of the confirmation of Judge Haynsworth. Their arguments reflect a great deal of careful analysis of this matter, and I believe deserve the attention of this body. One of these columnists, William F. Buckley, has discussed several aspects of this case with his customary ability to draw the distinctions which separate fact from fancy. Mr. Buckley draws his attention first to the lack of comparison of this situation with that of Justice Fortas. Second, to the ridiculous charge concerning the Greenville Hotel case; third, to the Maryland Casualty Co.; next to the Brunswick matter; and last, the alleged "association" with Bobby Baker. I believe my fellow Senators would find portions of Mr. Buckley's column interesting, and I should like to share them with you:

HAYNSWORTH DEFENDED

(By William F. Buckley, Jr.)

I defended Judge Fortas at the time, not knowing that his activities were—as the American Bar Association said—"clearly contrary" to the canons of judicial ethics. Fortas of course protested any investigation, but he did not invite any quasi-judicial examination of his records, so that he gave the public appearance of slinking away from scrutiny.

NOT LIKE FORTAS

Haynsworth, by contrast, dumped his meticulous files with the ABA and with the Senate committee, and the wonder of it is why he isn't confirmed immediately. An example of the kind of thing * * * against Judge Haynsworth is the so-called Greenville Hotel case. It is the * * * contention that Judge Haynsworth was clearly involved in a conflict of interest when he ruled on a case in which the Greenville Hotel was a litigant.

Investigation reveals that a) at the time Judge Haynsworth ruled on Greenville, he had no interest in the corporation whatsoever; b) six years earlier, when he was a practicing lawyer, he had consented to serve as a director of the corporation but, in order to qualify, he had to be a shareholder. Accordingly, he was sent one share of stock. Value, $21. Shortly after he became a judge, he received a dividend check for 15 cents and (would you believe?) Haynsworth even took the pains to list it on his income tax. The share of stock he gave back to the issuer years before he ruled on Greenville.

In the famous matter of the Maryland Casualty Company, it turns out that it is the subsidiary of American General Insurance, in which Judge Haynsworth had an interest. After examining the structure of the company, the nature of the case, and the interest of Judge Haynsworth, Sen. Cook, who was himself a judge, reported to his colleagues: "The Judge has only 0.0059 per cent of the 3,279,559 shares of preferred stock and an even smaller 0.0015 per cent of the 4,500,000 shares of common stock." How is that for a substantial interest?

CLOSE TO $5

On the Brunswick matter, Sen. Cook after similar investigation reported that the most that Judge Haynsworth could have benefited from the favorable ruling (made unanimously by the Circuit Court) would have been up close to, but not touching, five dollars.

So it goes, including Judge Haynsworth's "association" with Bobby Baker, whom he last set eyes on in 1958, years before it was known that Bobby Baker was a scoundrel, and with whom he was not engaged in any suspicious enterprise. Richard Nixon pointed out that he had known Baker far better than Haynsworth did, and that, in fact, Mrs. Bobby Baker had been one of his stenographers while he was in the Senate.

Holmes Alexander has also written a column on this subject. Mr. Alexander, who is known for his integrity and his honesty, points out that "every single accusation on conflict of interest has been proved a dud." I believe Mr. Alexander's thoughts on this matter are important, and I should like to read some of them to you:

[From the Greenville (S.C.) News, Oct. 18, 1969]

THE HAYNSWORTH NOMINATION STORY AN UNFUNNY COMEDY OF CONTRADICTIONS

(By Holmes Alexander)

Every single accusation on conflict-of-interest has been proved a dud. The insulting charges that Haynsworth instinctively gives decisions against labor and Negroes have been overwhelmed with citations that show him ruling for civil rights and against business corporations time after time. Authorities on judicial ethics have written and testified to uphold Haynsworth's conduct and intelligence during his years on the Circuit Court. The contradiction of baseless news stories about the President's or the judge's withdrawal of the nomination is a daily occurrence.

The battle is weird because the opposition, having totally failed in damaging facts, has turned to a chemical warfare of poisoning public opinion. The inflow of hate mail attests to this, and the undecided senators are in a crisis of conscience.

They can gain radical votes in their next election by stabbing Judge Haynsworth, but they'll have the blood of an honorable reputation on their hands if they do so.

Mr. President, another columnist who has discussed Judge Haynsworth and the issues involved in this debate most admirably is David Lawrence, distinguished editor of U.S. News & World Report. Mr. Lawrence points out that much of the opposition to Judge Haynsworth must be viewed in terms of the political clout of several of the large organizations which are opposing him rather than the merit of their charges. He also points out that the Senate Judiciary Committee has made an extremely careful investigation of Judge Haynsworth, his views, and his integrity, and has urged the Senate to confirm his nomination. Mr. Lawrence's column entitled "Haynsworth Battle a Political One" appeared on October 6, and I should like to read portions of it for the consideration of the Senate:

HAYNSWORTH BATTLE A POLITICAL ONE

(By David Lawrence)

What's really behind the opposition that has been manifested in the Senate against the confirmation of Clement H. Haysnworth, Jr., as a justice of the Supreme Court?

The answer is to be found in analyzing closely the political game. Those senators, for instance, who are fighting the man who has been serving as chief judge of the Fifth U.S. Circuit Court of Appeals take their cue for the most part from expressions that have come from the leaders of the AFL–CIO and the National Association for the Advancement of Colored People and other Negro organizations. The theory appears to be that the rank and file will be convinced that Judge Haysnworth is anti-labor and anti-Negro.

As for the labor leaders, it is well known that they maintain organizations which do a lot of electioneering in political campaigns and openly boast that they have the backing of a majority in the House of Representatives. They have substantial support in the Senate, too. The AFL–CIO does not hesitate to issue each year a list showing the percentage by which each member has supported the pro-labor side in legislative battles.

On the surface, the main weapon of opposition to Judge Haynsworth is an alleged lack of ethics in sitting on cases which supposedly could affect his financial holdings. Nobody has brought forth any proof of dishonesty or of prejudice related to his possession of securities. Judge Haynsworth did own some stocks in a company whose principal customer was a defendant in a lawsuit before the Court of Appeals on which he served, but the significance of this has been exaggerated. A smear campaign has been launched in the press in which several senators have participated.

It so happens that these charges were once investigated by the late Attorney General Robert F. Kennedy and were considered as no barrier to continuance on the lower court. The American Bar Association also has found nothing wrong in Judge Haynsworth's behavior. But how is the public to make up its mind when the anti-Haynsworth senators deliberately ignore such findings while making headlines by implying there was dishonesty?

The Senate Judiciary Committee has made a thorough inquiry, and its report will recommend confirmation of Judge Haynsworth. President Nixon has had every fact related to the record of Judge Haynsworth and his personal holdings of securities studied thoroughly and, despite the planted rumors of a withdrawal of the nomination, the White House says that nothing of the sort is contemplated. If the President backed down, he would lose the respect of a huge number of white voters as well as millions of citizens who don't like to see artificially stimulated suspicions and unproved charges of lack of integrity hurt the reputation of an honest man who has been named to be a Supreme Court justice.

It is obviously unfair for critics to base their opposition on political grounds, including attempts to curry favor with labor unions and "civil rights" organizations. Incidentally, a substantial number of senators didn't allow such bias to interfere with the confirmation of Negro lawyer, Thurgood Marshall, or of a former counsel of labor unions, Arthur Goldberg, as associate justices of the Supreme Court just a few years ago.

Mr. Lawrence wrote another column entitled "Ethics Paradox in Haynsworth Case" which appeared on November 10 of this year. A point he makes most effectively is that should Haynsworth be denied confirmation, "the Supreme Court could become a political agency subject to the will of vested interests."

[From the Washington (D.C.) Evening Star, Nov. 10, 1969]

ETHICS PARADOX IN HAYNSWORTH CASE

(By David Lawrence)

One of the biggest paradoxes in American politics is developing. Despite holier-than-thou outcries about "ethics," nothing is being done about the involvement of some members of Congress in a "conflict of interest."

Why are so many senators—both Republicans and Democrats—readily intimidated by the pressures of large labor unions and civil rights organizations? It may well be assumed that some senators who are opposing the nomination of Judge Clement F. Haynsworth to the Supreme Court will receive the help of these organizations, which contribute considerable amounts of money to political campaigns.

No secret is made of the fact that huge sums are spent and support is given for the election of certain members of Congress, irrespective of party, if they do what the labor unions or Negro leaders tell them to do.

What other explanation could there be for the extraordinary opposition lined up against Haynsworth? It is charged that he has not been sufficiently sensitive on the ethical side, but no convincing case of "conflict of interest" has really been made against him.

Attorney General John N. Mitchell said last week on television that, prior to the nomination, Haynsworth had been thoroughly investigated, including a complete review of his tax returns, his financial statements and his stock holdings. When the attorney general was asked on "Meet the Press" why, therefore, so many senators were opposing the confirmation, he declared: "If the President of the United States had nominated one of the Twelve Apostles, he would have the same problem."

This indicates clearly that the controversy is not related primarily to ethics and that the issue is being used as a kind of cover. The smears and innuendoes that have been made have undoubtedly had their effect on some elements in the electorate. But the truth is that if Haynsworth had not written

any opinions relating to civil rights or to labor union matters, he would not have had the slightest problem in getting confirmed. The "ethics" charge would have been insignificant in its impact.

Unfortunately for Haynsworth, because he comes from the South and, along with other judges, has handed down some rulings on labor matters that the union leaders don't like, an organized effort is being made to block his appointment to the Supreme Court.

American politics has reached one of its lowest points when an honest man—chosen by the President of the United States to serve on the Supreme Court because of his experience and capability as a judge—can be threatened with a denial of the seat because of the fact that, while he was a judge of the U.S. Court of Appeals of the Fourth Circuit, his decisions didn't please the labor politicians and Negro leaders.

Such views can prevent the country in the future from getting impartial and fair-minded judges. The Supreme Court could become a political agency subject to the will of vested interests which have enough money or influence to defeat senators for re-election if they don't vote on judicial confirmations in the way demanded of them by special groups.

Suggestions have been made by some of his opponents that Haynsworth ought to withdraw voluntarily. This, however, is merely a device that would help his critics. For if there were no actually recorded vote, the senators opposing the confirmation would be safe and would not feel at the polls any ill effects of their votes.

What some of the political science students of today ought to do is to make a list of all the senators who have already spoken out against Haynsworth and examine the nature of their constituencies—the number of big cities with a large Negro population or with a heavy labor union vote. In some instances these votes dominate statewide elections and overcome the support an opposing candidate may get in the rural or suburban areas.

What is most important is a record of the vote on the Haynsworth nomination, so that the American people may know which senators have voted against him. This could bring out a resentment vote in the next election, as the people do not like to see their representatives in Congress kowtow to the demands of groups which seek the appointment of judges favorable to their side and without regard to the public interest.

Mr. President, Mr. Kilpatrick wrote another column which was published on August 25 on this nomination, which appraised Judge Haynsworth as a "judge's judge" and "as an able scholar, a hard worker, and a jurist of long experience."

Mr. Kilpatrick also points out the parallel between this case and that of Judge Parker and the tragic rejection of his nomination by the Senate. I urge my colleagues' attention to Mr. Kilpatrick's important views. The article reads as follows:

[From the Columbia (S.C.) State, Aug. 25, 1969]

HAYNSWORTH'S FOES PUTTING UP BAD SHOW—HE IS A JUDGES' JUDGE

(By James J. Kilpatrick)

WASHINGTON.—The civil libertarians of this country are putting up a poor show in the matter of the nomination of Clement Haynsworth to the U.S. Supreme Court. The South Carolinian is highly qualified; he ought to be promptly confirmed when the Senate resumes its sessions next month.

If Joe Rauh and his liberal friends have their way, a Senate clock will be turned back almost 40 years and Haynsworth will not be confirmed at all. In Rauh's view—he is vice chairman of Americans for Democratic Action—"his is the worst possible time to appoint a hard-core segregationist."

The charge is absurd. Judge Haynsworth is a hard-core segregationist in about the same fashion that Rauh is a card-carrying member of the Communist party. The one accusation is no more ridiculous than the other.

Nevertheless, Rauh is rallying the Leadership Conference on Civil Rights, which he serves as general counsel, to throw its full weight against the Haynsworth confirmation. The AFL–CIO doubtless will go along, on the equally flimsy notion that Haynsworth is somehow "anti-labor" or "pro-management."

One is reminded, sadly enough, of Herbert Hoover's nomination of John J. Parker of North Carolina back in 1930. Parker was possessed of one of the most luminous minds and finest intellects ever to adorn the federal bench. Like Haynsworth, he served for many years as chief judge of the Fourth Circuit. But when Hoover nominated Parker to succeed Edward T. Sanford on the high court, organized labor and the NAACP roared into action.

The most grievous charge against Parker was that he had decided against the United Mineworkers in the union's "yellow dog" suit against the Red Jacket Coal Company. It also was charged that Parker once had made a speech, many years earlier, containing some slurring references to Negroes.

Today it would be hard to find a responsible lawyer who would challenge the correctness of Parker's Red Jacket decision in the context of its day; Parker did what he had to do. And far from being "anti-Negro," the North Carolinian established a liberal record, both as a man and a judge, that was far ahead of his time.

Nevertheless, Senators Norris, Borah and LaFollette, the big three liberals of the 71st Congress, so inflamed their colleagues that Parker at last was denied confirmation, 41–39. It was a shameful chapter in Senate history.

It would be grossly wrong to see history repeated in the Haynsworth nomination. This time the most grievous charge is that in passing upon certain cases of school integration, Haynsworth has refused to put the lash on Southern school boards: He has not demanded that they take certain affirmative actions to achieve greater integration.

A further charge is that in the Darlington case of 1963, Haynsworth found no statutory inhibition against a company's closing a profitless mill by reason of union activity.

Doubtless both charges will be thrashed and winnowed before the Judiciary Committee in its hearings on the Haynsworth nomination. It will suffice here to say that a large body of respected constitutional theory supports Haynsworth's view of the Fourteenth Amendment. Like Parker, he concluded that the Fourteenth merely prohibits state-enforced segregation; it does not require state-encouraged integration. In the labor case, reversed by the Supreme Court in March of 1965 (380 U.S. 263), the Haynsworth view was reasoned, objective, and buttressed by an impressive record.

In any event, there is nothing to suggest that Haynsworth has been motivated on the bench by any force but his own integrity. He is not a colorful judge. He surely is no phrase-maker; his opinions often flow like library paste. But he is an able scholar, a hard worker, and a jurist of long experience. His opinions suggest a meticulous mind at work. He is a judges' judge.

When Arthur Goldberg was nominated in 1962, some of us on the conservative side felt it a big much for the general counsel of the AFL–CIO to bring a lifetime of pro-labor advocacy to the Court. When Thurgood Marshall was nominated in 1967, we made a point of his long career as chief lawyer for the NAACP. No such built-in bias can be charged against Haynsworth. His confirmation would bring balance and moderation to a Court that needs these qualities badly.

Another columnist who has written persuasively and effectively in favor of this nomination has been James J. Kilpatrick. In a column entitled "Propagandists' Work of Art" published on October 29, Mr. Kilpatrick describes the case against Haynsworth as "trumped up" and as a "triumph of the propagandist's craft." He further remarks:

It is like John Randolph's dead mackerel in the moonlight, a work of artistry that both shines and stinks.

Mr. Kilpatrick has taken the time and effort to examine the record carefully and I urge the Senate's attention to his unusually perceptive views, as follows:

[From the Columbia (S.C.) State, Oct. 29, 1969]

PROPAGANDISTS' WORK OF ART: CASE AGAINST JUDGE IS BRILLIANT BUT UNFAIR

(By James J. Kilpatrick)

WASHINGTON.—The question is, or will be within the next two or three weeks: Will the Senate advise and consent to the nomination of Clement F. Haynsworth to become an Associate Justice of the Supreme Court of the United States?

It is a pity that members of the Senate already have indicated their intention to vote against confirmation. Once a senator has taken a position publicly, he hates publicly to change his mind. Yet the case against Haynsworth is so flimsy, so specious, so lacking in real substance, that many of these senators might be prompted by a close study of the record to reconsider their opposition.

What we are witnessing, in the trumped-up "case against Haynsworth," is a triumph of the propagandist's craft. Into a smoking pot, the judge's opponents have flung a shrewd mixture of truth, half-truth, whole lies, base insinuations, and old-fashioned politics. By heating up this farrago, they have created great clouds of unfounded doubt; and they have succeeded in making this phony doubt the very basis of their opposition.

On one point I am absolutely satisfied: I am satisfied of Haynsworth's integrity. When the record is seen clearly, and not through a smokescreen, the record discloses not even the appearance of impropriety.

The trouble is that the smokescreen is so thick that busy men—and senators are busy men—cannot conveniently take the time to penetrate the fog. It may be instructive to see how such a smokescreen is contrived.

In his statement of October 8, Indiana's Sen. Birch Bayh charged that in at least five cases, Judge Haynsworth "held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the canons of judicial ethics." It is a serious charge; if proved, it would justify Haynsworth's rejection.

But it is not true. One of the five cases listed by the senator was Merck v. Olin Mathieson Chemical Corporation. Judge Haynsworth never held stock in either corporation, Bayh's staff was in error.

Another of the listed cases was Darter v. Greenville Community Hospital. Haynsworth's "substantial" holdings amounted to precisely one share—one pro forma share paying a 15-cent annual dividend—in his home town's hospital.

A third case was Farrow v. Grace Lines. Haynsworth held no stock in Grace Lines. He did hold 300 shares in W. R. Grace & Co., which owned Grace Lines along with 52 other subsidiaries. The Farrow case involved a $50 judgment.

Still another of Senator Bayh's charges was that Judge Haynsworth violated ethical canons by not disqualifying himself in Kent Mfg. Corp. v. Commissioner of Internal Revenue. But it turned out, after the senator's charge had been added to the stew, that Bayh had the wrong Kent Manufacturing Corporation. Sorry 'bout that.

Very well. I do not impugn Bayh's motives, only his staff work. But the damage is done. In a race of this kind, which must be quickly run, truth cannot catch up with falsehood. A senator who might be predisposed to vote against Haynsworth, if only to soothe black and labor interests, is likely to recall vaguely that Bayh listed a whole string of cases in which the judge was a big stockholder in companies before his court. The refutation of these baseless charges will go unnoticed.

Perhaps Nixon himself should not have accused Haynsworth's opposition of engaging in vicious character assassination. Presidents are expected to speak in softer accents. Yet that is exactly what the case against Haynsworth amounts to. It is like John Randolph's dead mackerel in the moonlight, a work of artistry that both shines and stinks.

I have an article that appeared in the National Review magazine on November 18, 1969. This story is concerned with the treatment of the Haynsworth matter, and I think it reveals the hollowness of the attacks in the press that have been leveled.

This article, which was written by the distinguished columnist Ralph de Toledano, is an extremely thorough account of the entire controversy surrounding Judge Haynsworth and the part played in this controversy by the press, more particularly Time magazine:

TIME MARCHES ON HAYNSWORTH

(By Ralph De Toledano)

Once upon a Time, to put it charitably, the deception was brazen but it had style. There was, for example, the famous cover story in the Fifties which made statements running directly counter to the material in the magazine's own research files and in the memoranda of its chief Washington correspondent. But *Time* laughed arrogantly when the hoax was discovered, telling protesting readers that it was all a matter of "opinion."

Those were the good old days for *Time*. But the magazine has grown shabby with the passing of the years, and nervous as the competition begins to nip at its heels. It is no longer the dream of aspiring newspapermen and college sophomores to work in that Matterhorn of glass, steel and gimcrack in Rockefeller Center. The pay is no longer that good, and the real sharp practitioners of journalistic legerdemain have gone elsewhere. But *Time* still has its moments of greatness—and this may bring back the advertising revenue that has been slipping away to *Newsweek* and to television.

I cite as Exhibit A to prove the point *Time's* handling of the Haynsworth case. In this, of course, *Time* had the help of substantial segments of the metropolitan press corps and the electronic media. But *Time's* achievements in this case should not be minimized. The newspaper reporter works under the pressure of a daily deadline—several, for his wire service cousin. Without the procrustean limitations of a news magazine story, he occasionally slips and lets the facts speak for themselves. But *Time* has several days of each week to mull over a story, to study the file, to query its correspondents. The final story is the product of many hands, much revision and the possible *nihil obstat* of experienced editors. An event as important and significant as the public lynching of a man appointed to the Supreme Court by a controversial President gets all of this loving attention and more, since it becomes a policy matter.

Time had a choice in reporting the Haynsworth case. With its tremendous manpower resources, it could have covered the story like a blanket, digging into court records, interviewing participants, scrutinizing and analyzing Chief Judge Clement F. Haynsworth's stock portfolio, determining for his broker just what the nominee's role was in the various transactions now under debate, checking the allegations made about him against the facts, and looking into the motivations of those who have turned what was simply a confirmation routine into what they hope will become *Senate* v. *Haynsworth*.

Or, it could have joined the tar-and-feathers brigade, joyously opening its pages to the full indictment—no holds barred, no pretense at impartiality, a big brother, let us say, to the *New York Post*. But *Time* marched on Haynsworth in its classic style, always lagging slightly behind the pack—superb in its use of innuendo, corrupting the record only with care, magnanimously granting Judge Haynsworth a point here and there, but never impeaching or even questioning the motives of those who were swinging the rope over the tree limb.

Like those most active in the anti-Haynsworth posse, *Time* was aware that the real victim of the attack on a Fourth Circuit Court of Appeals chief judge was not to be Clement Haynsworth but Richard Nixon. The Haynsworth case was to be a chapter in a work in progress fittingly and sadly named by David S. Broder, an earnest reporter, "The Breaking of a President." With luck and voodoo, it could be the key chapter, eliminating moderate conservatism and contributing to the hoped-for polarity of a confrontation with the extremes of Left and Right.

For the sake of clarity, let me rehearse the chronology.

Last August, President Nixon nominated Judge Haynsworth to the seat on the Supreme Court vacated by Justice Abe Fortas—the so-called Jewish seat. This, to those who believe that the high court must be made up of racial representatives rather than sound jurists, was anathema. There were other outrages in the choice of Judge Haynsworth. He was a Southerner who had voted sometimes, though not always, for decisions which the National Association for the Advancement of Colored People found obnoxious. Of greater import was his role in the famous Darlington case in which he once held that an employer running a rapidly deteriorating business should be allowed to shut up shop. This, though Judge Haynsworth later reversed himself, won him the undying enmity of George Meany and the AFL–CIO, operating under the not too unsubstantiated belief that on labor matters the American judicial system should be run by their general counsel's office.

At a high-level meeting at the AFL–CIO's white palace near the White House, it was decided to go all-out against the Haynsworth appointment 1) to put the fear of God into any other independent judges and 2) to teach the Nixon Administration a lesson. The strategy was to mobilize labor's phalanx in the Senate—the men who owed their election to labor money and labor manpower; to put together some sort of alliance with the NAACP, bitter at President Meany for his refusal to crack down on craft unions which discriminate against Negroes; and to dig up some old charges of "conflict of interest" against Judge Haynsworth. (These charges, incidentally, had been withdrawn by the union officials who originally made them and dismissed after investigation by Attorney General Robert F. Kennedy—hardly an antagonist of the AFL–CIO.)

THE CHARGES

To raise the cry against a Supreme Court appointee also has its in-built humor. No one mentioned that most of Arthur Goldberg's legal career had been as a paid advocate of the labor movement, or that Thurgood Marshall, who must cast his vote on civil rights cases, was for years a paid official of the NAACP. Or, for that matter, that Justice William O. Douglas was until recently the president of a foundation financed by gambling money provided by a company whose current difficulties will inevitably end up before the Supreme Court.

That the American Bar Association's committee on ethics twice sustained Judge Haynsworth's integrity, hardily deterred the AFL–CIO or its legislative flunkies. Neither did logic or honesty prompt the anti-Haynsworth forces to accept the fact that the Canon of Ethics bars a judge from sitting on a case only if he has "substantial" interests in the litigations. In one of the instances of "conflict of interest" excitedly alleged against Judge Haynsworth, a multimillionaire, his entire benefit amounted to 48 cents, in another to less than $5.

It should have been of some journalistic interest to *Time* to note and evaluate the charges made by Senator Bayh. In one case, Mr. Bayh got his companies all wrong. In two cases, Judge Haynsworth voted against the companies involved and for the union. In still another case, Judge Haynsworth voted against what were purportedly his interests by allowing a textile mill related to a company which did business with another company in which he held a share to shut down, thereby reducing its business. Repeatedly, Senator Bayh got his facts and his chronology so wrong that it made no sense—except, of course, political sense.

At the start, it was clear that the only case against Judge Haynsworth was his adherence to a strict construction of the Constitution, a deadly sin to the liberal Establishment, and his lack of judicial flair. The statement by Joseph Rauh, the scatter-brained vice chairman of Americans for Democratic Action, that the nominee was a "hardnose segregationist" was even ridiculed by the *Washington Post*. After some days, the rallying cry of his "anti-labor bias" was toned down (by *Time*, incidentally) to an "anti-labor image." Eventually, the charges of conflict were thoroughly demolished by Clark Mollenhoff, a Pultizer-prize-winning investigative reporter now serving as Deputy Counsel to the President. This, to those who do not know Mr. Mollenhoff, might disqualify him as a Nixon Administration partisan. But aside from the documentation of the rebuttal, there is Mr. Mollenhoff's character and reputation. He is a stubborn man of great journalistic rectitude, and had he found anything remotely questionable in the Haynsworth record, he would have resigned rather than issue his devastating statement for the defense.

But how did *Time* tell the story? As they used to say: Read 'em and weep.

THE FACTS

First, let us read what the *Nation*, that bastion of the Old and New Left had to say about Judge Haynsworth when he was named: "No genius of the law . . . no Brandeis or Cardoza [*sic*] surely, but a hard-working lawyer, without pomposity, of consistent judicial temperament. He has biases, but he is aware of them—no small virtue in a judge . . . a genuine conservative amid the host of reactionaries masquerading as conservatives . . . [with] important appellate experience."

And now to *Time*. (All emphases added.)

September 26, 1960: "The most damaging allegations, however, concerned the Appellate Court Judge's failure to remove himself from cases in which he may have had a financial interest. Led by Indiana's Birch Bayh, liberal committee members charged Haynsworth with a conflict of interest for not disqualifying himself from a 1963 trial involving the Textile Workers Union and a firm that did business with a vending ma-

chine company in which he had a one-seventh interest."

The "may" is, of course, the giveaway. Didn't Time researchers know? And didn't they know that in two Textile Workers cases, Judge Haynsworth voted for the union? Or that the vending machine company's dealings with the unnamed firm itself (Darlington) amounted to zero, only 3 per cent of its business coming from the associate Deering Milliken Company, giving Judge Haynsworth roughly .0042 per cent, which is hardly the "substantial interest" demanded by judicial canons?

Of this case, *Time* said: "John P. Frank, liberal Democrat who serves on the Advisory Committee on Civil Procedure of the Judiciary Conference, stated flatly that 'there was no legal ground for disqualification.' " It did not add these words from Mr. Frank: "It is perfectly clear under the authority that there was literally no choice whatsoever for Judge Haynsworth except to participate in that case." Nor did it point out, as noted above, that in ruling on the Darlington case, the judge reduced, rather than increased, the income of the vending machine company, Carolina Vendamatic.

Same story: "The judge, who sat on a 1967 case involving the Brunswick Corporation, bought stock now valued at $18,000 between the time of the argument and the release of the decision in favor of the company." The facts: The Circuit Court unanimously agreed on a disposition of the case early in November. Judge Haynsworth bought his stock in December. Secondly, the case was a small one ($90,000) which could have virtually no effect on the value of the stock—one-half cent a share, to be exact.

October 10, 1969: "What brought about the sudden shift in Republican ranks against Haynsworth was the disclosure that he once had a tenuous business connection with Bobby Baker, the former Democratic Senate aide who was convicted of larceny and tax evasion in 1967. Both men invested in a South Carolina real estate deal several years ago although neither apparently knew each other. . . . The real estate deal was apparently innocuous and innocent." The facts: There was no business connection. Both men invested in a cemetary company. They met only on three occasions, briefly, at ceremonial occasions, when Bobby Baker was Lyndon Johnson's protege and doing much more substantial business with many members of the Senate. The real estate investment had nothing to do with Baker's later troubles—something which Time "apparently" did not care to disclose.

Same story: "According to this theory [an "explanation" of why Mr. Nixon has continued to support Judge Haynsworth] Nixon met with South Carolina's Senator Strom Thurmond and other Southern leaders in Atlanta in May of last year . . . Nixon supposedly made certain promises, one of them being a guarantee to Strom Thurmond that he could name a justice to the Supreme Court when the opportunity arose." The facts: (1) No such promise was made. (2) Senator Thurmond's candidate for the Supreme Court seat was passed over by the White House. Judge Haynsworth, though now supported by Mr. Thurmond, was never the Senator's candidate.

COUP DE TIME

October 17, 1969: "Kentucky's freshman GOP Senator Marlow Cook issued a broadside against Bayh's charges . . . Haynsworth, said Cook, was being subjected to 'character assassination.' " The facts: Senator Cook issued a long and detailed analysis of Judge Haynsworth's stock holdings, showing gross errors and falsifications in Mr. Bayh's allegations. This statement was available to *Time*, since it was in the *Congressional Record*, but by simply quoting the "character assassination" phrase, without offering any of the rest of Senator Cook's argument, *Time* reduced it to name calling.

In the same October 17 issue, *Time* devoted almost a page of its section, "The Law," to Haynsworth decisions and concurring votes. Under the subhead of "Civil Rights" it listed all those decisions which legal "activists" would consider gradualist in tendency. It failed to cite the case in which Judge Haynsworth ruled against a dentists' association which barred Negroes. *Time* reviewed all the Haynsworth cases which labor opposed, but failed to mention that on two occasions he ruled in favor of the Textile Workers Union. But *Time's* major masterpiece was its summation of the Darlington Mills case, referred to *passim* in this account.

Said *Time:* "In South Carolina, the Textile Workers Union of America had won an election at a previously non-union mill operated by Darlington Manufacturing Co. *In response,* Darlington closed the mill, laying off five hundred employees. Haynsworth concurred in a majority opinion that the company had a right to close out 'part or all' of its business, whether or not its motive was anti-union. In overturning the decision, the Supreme Court noted unanimously that a partial closing of a business is unfair if the purpose and probable effect are to 'chill unionism' in the employer's remaining plants."

This parody of the Darlington case warrants extended treatment, if only because it was the seed from which all the other charges against Judge Haynsworth grew. The facts were all on the record, in the pleadings before the Circuit Court and the Supreme Court—but *Time* preferred to tell it much in the manner of the *AFL–CIO News*, a handy shortcut.

The facts, then, are these:

Darlington was an old family-owned mill which went into bankruptcy in 1937 and was rescued by an infusion of money from Deering Milliken which took over 69 per cent of its stock. In 1956, Darlington was again in trouble. An engineering efficiency concern was called in to devise a plan to keep the company in business. That plan called for the infusion of considerable sums of money and a reorganization which would increase the productivity of its employees—if Darlington was to survive. At this time, the Textile Workers of America began an organizing drive at Darlington, until then non-union. Union organizers promised that if they won the right to bargain collectively, they would block the reorganization of Darlington. And the union did win, by a six-vote margin. Obviously, Darlington could not survive under these circumstances, and the stockholders voted overwhelmingly to shut down the plant and cut their losses. The machinery was sold forthwith. The Textile Workers Union then filed a complaint with the National Labor Relations Board charging "unfair labor practices."

In April of 1957, the NLRB trial examiner ruled that Darlington's economic plight warranted the shutdown, the unfair labor practice existed only because of the timing of the shutdown, but that Darlington would have gone out of business in short order. The examiner recommended that the NLRB refrain from granting Darlington workers "lost" wages because no manufacturing plant existed. The NLRB postponed any decision on the case but ordered the trial examiner to take evidence to the connection between Darlington and Deering Milliken. After 2,500 pages of additional testimony and four hundred pages of exhibit, the trial examiner ruled that, divested of legal language, Deering Milliken was not a party to the dispute. Two years later, the NLRB returned the case to the trial examiner for further hearings.

Faced by this harassment, Deering Milliken filed suit against the NLRB, asking the Federal District Court in North Carolina to enjoin the trial examiner from reopening the case. The NLRB appealed the Federal District Court injunction to the Fourth Circuit Court of Appeals. Judge Haynsworth, though his ruling states that the NLRB had not done its statutory duty of deciding the case, within a reasonable time, nevertheless modified the district court injunction and allowed the trial examiner to take new testimony as to whether Deering Milliken rather than Darlington was the "single employer" and therefore a party to the suit. The trial examiner's recommendations were as before, specifically that the NLRB and its general counsel had not shown that Deering Milliken was the "single employer." The NLRB thereupon reversed its own trial examiner and ruled that Deering Milliken was the "single employer" and therefore answerable for the shutting of the plant. The Fourth Circuit Court refused to sustain the NLRB in a decision written by a judge other than Haynsworth. This decision was in line with the preponderance of rulings made by other federal courts of appeal.

Enter now the Supreme Court. Having heard argument, it did not reverse the decision in which Judge Haynsworth had concurred. The high court merely said that certain essential information had not been developed so far in the litigation. By steps the case moved back to the trial examiner who said that Darlington had not been closed in order to discourage unionism in Deering Milliken plants. He also dismissed all the charges against Deering Milliken. The NLRB again overruled its own trial examiner and the case moved up to the Fourth Circuit Court which sustained the NLRB, with Judge Haynsworth concurring.

This is the case which *Time* so whimsically characterized in one brief paragraph distinguished by an error in almost every sentence.

It is out of this case that *Time* found the inspiration to march on Judge Haynsworth—a case about a plant which was already dismantled when it reached Judge Haynsworth, who presumably subverted the law to put Vendamatic machines into the ghost premises—or to pick up a couple of extra bucks from Deering Milliken. An aspiring candidate for the Ph.D could come up with some interesting notes on the nature of the news media were he to follow that story from the research files and the memoranda from *Time* correspondents, through the writer's copy, to the hapless checker who must, according to *Times's* rules, find corroboration for every word in a *Time* story.

Was she asleep at the switch, too busy reading the underground press, or—as it happened repeatedly in Whittaker Chamber's day—was the research file simply spirited away by an eager anti-Nixonite, forcing her to rely on the *New York Times*?

It is lamentable, although not surprising, that many of the newspapers, television stations, and other news media have derided Judge Haynsworth. Unfortunately, yellow journalism is not dead and much has been done by the press to smear this man.

I have an article from the November 1 edition of Human Events which gives a breakdown of the charges and replies to those charges that have been made concerning Judge Haynsworth. I would like to read this article for it gives a point-by-point analysis of the situation:

CHARGE

Haynsworth voted with a 3-to-2 majority of the Fourth U.S. Court of Appeals on Nov. 13, 1963, to permit the Deering Milliken textile company to close an affiliated plant in Darlington to avoid unionization there. At the time the judge had a one-seventh ownership interest in Carolina Vend-A-Matic Co., which was then doing $100,000 worth of business a year with Deering Milliken interests.

The judge should have disqualified himself because of that connection.

REPLY

The judge definitely should not have disqualified himself because: (1) Vend-A-Matic was not involved in the case in any way; (2) The Darlington plant did not even use Vend-A-Matic machines; (3) Vend-A-Matic's gross receipts from Deering Milliken interests amounted to only 3 per cent of its total volume of business; (4) The judge, in fact, actually had a *duty* to sit on the case.

Former Federal Judge Lawrence E. Walsh, chairman of the American Bar Association's Committee on Judicial Selection, for instance, testified there was "no conflict of interest in the Darlington case that would have barred Judge Haynsworth from sitting and we also concluded that it was his duty to sit."

John P. Frank, a leading authority on judicial disqualification, stated that "under the standard federal rule Judge Haynsworth had no alternative whatsoever [in the Darlington case]. It is a judge's duty to refuse to sit when he is disqualified, but it is equally his duty to sit when there is no valid reason not to. . . . I do think that it is perfectly clear under the authority that there was literally no choice whatsoever for Judge Haynsworth except to participate in that case."

CHARGE

The judge should have disqualified himself from the Darlington case because it was crucial to the economic health of the entire Southern textile industry, which he had helped develop and which was the source—in 1963—of three-fourths of Vend-A-Matic's business.

REPLY

The court ruling was only one of three decisions involving the Deering Milliken plant's labor situation and the judge ruled *against* the company in the last of these. His role in helping develop the textile industry was confined to normal legal advice given as a private attorney. Vend-A-Matic's business had outlets other than textiles and its overall business reflected a cross-section of companies in the area.

Furthermore, there is no indication whatsoever that the vending machine business would have in any way been adversely affected, even if all the various rulings in which Haynsworth participated had gone against the textile industry.

CHARGE

Since 1957, when the judge was appointed to the bench, Vend-A-Matic's gross sales have risen dramatically from $296,413 in 1956, for instance, to $3,160,665 in 1963, the year Judge Haynsworth ruled on the Darlington case. The judge, he notes, also took an active part in Vend-A-Matic affairs—at least nominally holding office as vice president and director until 1963, attending regular board meetings, receiving director fees as high as $2,600 and having his wife Dorothy serve as secretary for two years. Bayh thus raises the prospect that Haynsworth's name and judicial position were used to promote his business in some improper way.

REPLY

Sen. Bayh makes no charge that Judge Haynsworth performed even one questionable act to solicit business for the food vending firm. He only insinuates that the increased profits of Carolina Vend-A-Matic must have been somehow related to the fact that Haynsworth was a federal judge. There is, however, absolutely no evidence that Judge Haynsworth ever did solicit business for Carolina Vend-A-Matic, a finding that has been corroborated in an impressive manner.

Wade Dennis, who became general manager of Carolina Vend-A-Matic in 1957, states that "Judge Haynsworth did not involve himself in any way in the management or direction of the company, and in no case did he participate directly or indirectly with the solicitation of any business, or intervene in our behalf with any client . . . he would have had no way of knowing what account we served or who we were in the process of trying to sell." Virtually all business was gained "by sales efforts followed by bidding among competing companies."

The Dennis statement is supported by a letter from an official of Carolina Vend-A-Matic's leading competitor. Alex Kiriakides Jr., of Atlas Vending Company, Inc., Greenville, S.C., in a letter to the Senate Judiciary Committee, stressed his concern over what he termed "the slanders which are being circulated in the press about Judge Haynsworth and Carolina Vend-A-Matic."

Kiriakides made these significant points: (1) The food vending business in South Carolina and in the United States has had a phenomenal growth, and "the experience of Carolina Vend-A-Matic was not in the least unique to it"; (2) His own business, Atlas Vending, experienced comparable growth, as did other similar businesses in the area; (3) He competed with Carolina Vend-A-Matic for locations in textile plants and other industrial plants and the practice in the area was to make the awards on the basis of open bidding; (4) Carolina Vend-A-Matic was not developed on the basis of anyone using anyone's influence on anybody.

"I know that Judge Haynsworth's name was never used in an attempt to influence anybody," Kiriakides said. "As a very active competitor, I knew what was going on in the business, and I would have heard of it if it had been." "Carolina Vend-A-Matic, under the direction of Mr. Wade Dennis," stated Kiriakides, "operated in an honest and honorable fashion."

Furthermore, Simon Sobeloff, chief judge of the Fourth Circuit Court in 1963, conducted an investigation that year to determine the validity of an illegation that Judge Haynsworth had favored Deering Milliken in the Darlington case because Deering Milliken personnel had promised to throw additional business to Carolina Vend-A-Matic.

Judge Sobeloff concluded that this was emphatically not the case, forcing an apology from the counsel of the Textile Workers Union who had originally asked Sobeloff to investigate the charge. Judge Sobeloff, moreover, stressed that he was "assured that Judge Haynsworth has had no active participation in the affairs of Carolina Vend-A-Matic, has never sought business for it or discussed procurement of locations for it with the officials or employes of any other company."

CHARGE

The judge had a conflict of interest when he participated in a 1959 ruling favorable to Homelite Co., which did a total volume of business of $16,000 with Vend-A-Matic that year.

REPLY

Just as in the Darlington case, Vend-A-Matic was not at issue, and the judge voted in favor of Homelite only because the other litigant had committed fraud. Judging from the testimony given by ABA official Lawrence Walsh and ethics expert John Frank, furthermore, the conclusion is inescapable that Judge Haynsworth had an equal duty to sit on this case involving customers of Vend-A-Matic as he did in the Darlington Corp. case.

CHARGE

The judge had a conflict of interest when he participated in 1959 and 1961 cases involving Cone Mills Corp. Vend-A-Matic sales to Cone Mills and its subsidiaries totalled $97,367 in 1959 and $174,314 in 1961.

REPLY

Vend-A-Matic was not involved in either court case. The judge, moreover, voted *against* Cone in both cases. Again, the Walsh and Frank testimony suggests that Haynsworth would have been required to sit on these cases.

CHARGE

The judge had a conflict of interest when he participated in 1962 and 1963 cases involving Deering Milliken Research Corp. Vend-A-Matic sales to Deering Milliken totalled $50,000 in 1962 and $100,000 in 1963.

REPLY

Vend-A-Matic was not involved in either court case. Each case involved only procedural questions, not necessarily favorable or unfavorable to Deering Milliken Research Corp. The Walsh and Frank testimony would also apply here.

CHARGE

Sen. Bayh accused Haynsworth of having a conflict of interest when he participated in a 1961 case involving Kent Manufacturing Co. In that year, Vend-A-Matic had sales of $21,322 to a Kent subsidiary named Runnymeade.

REPLY

There is no connection between Kent Manufacturing, a Maryland corporation which makes fireworks and was the litigant mentioned by Sen. Bayh, and the Kent Manufacturing Co. in Pennsylvania which operated the Runnymead plant in Pickens, S.C. Bayh even withdrew his charge after Haynsworth backers revealed the error.

CHARGE

In the last five cases Judge Haynsworth "held a financial interest in one of the litigants substantial enough to require disqualification under 28 USC 455 and to constitute impropriety under the canons of judicial ethics."

REPLY

The accusation is absolutely false. One of the five cases was the Brunswick case. The Fourth Circuit Court unanimously agreed to the disposition of the case on all issues on Nov. 10, 1967, more than one month before Haynsworth purchased $16,000 worth of Brunswick stock. Judge Harrison Winter, who wrote the opinion, maintained that Haynsworth had broken no judicial code in purchasing the stock, even though Haynsworth himself acknowledges that he had been careless in purchasing the stock before the written opinion had been actually released. Whether Brunswick won or lost the case, however, could not possibly have made any material difference to its stockholders, since the amount involved was minimal. Asked bluntly by Sen. Strom Thurmond whether Haynsworth's purchase of the stock should disqualify him from the Supreme Court, Judge Winter replied: "I don't consider it the slightest disqualification."

Another of the five cases listed was *Merck vs. Olin Mathieson Chemical Corp.* Judge Haynsworth, it turns out, never owned any Merck stock and never owned any Olin Mathieson stock. Bayh now says his staff researchers misread a business transaction and that this charge "is an error."

Two more of the "big five" cases involved Grace Lines and Maryland Casualty Co. Haynsworth, it develops, also owns no stock in either of these companies, but Bayh contends he should have disqualified himself because he owns stock in the parent corporations. Yet the canons of judicial ethics do not forbid a judge to own stock in a subsidiary or parent corporation of a litigant. And court cases strongly suggest a judge is not required to disqualify himself unless he owns stock in the litigant itself. Furthermore, Judge Haynsworth's rulings involving both Grace Lines and Maryland Casualty would have had virtually no impact on the value of the stock of the mammoth parent corporations. Using Bayh's reasoning, it is contended, a judge could not rule on, let us say, General Motors, if he owned a mutual fund which, in turn, owned shares of General

motors, for he might somehow "benefit" from the decision.

The last of the big five cases—*Darter vs. Greenville Community Hospital*—was decided in 1962. This case, according to President Nixon's deputy counsel, Clark Mollenhoff, "demonstrates the absurdity of Sen. Bayh's allegations that Judge Haynsworth was involved in conflicts of interest because of a substantial interest in corporations that had business before his court."

Judge Haynsworth had absolutely no interest in the Greenville Community Hotel Corp. or in any company having any interest in that corporation in 1962. On April 26, 1956, before Haynsworth was on the court, one share of Greenville Community Hotel Corp. stock worth only $21 was transferred to him so he could be a director of that corporation. He held that position until he went on the bench in 1957.

A short time later, Jan. 1, 1958, Judge Haynsworth did receive a check for 15 cents, the 1957 dividend on his one share. Judge Haynsworth, thinking he no longer owned that one share, sent the check to Alester G. Furman Jr., who had transferred the one share of stock to him two years earlier. Furman then returned the 15-cent check to Judge Haynsworth and Judge Haynsworth listed that 15-cent check as income on his tax return. The one share was later transferred to Furman, who sold it on Aug. 1, 1959, for $21.

CHARGE

The judge was involved, along with others, in a South Carolina cemetery venture with Robert G. "Bobby" Baker, the discredited former Senate Democratic secretary who resigned under criticism for his business dealings.

REPLY

There were 25 individuals and business firms involved in the venture, which Haynsworth entered purely on the advice of others. He did not see or communicate with Baker in connection with the investment. He has had only three conversations with Baker, the last in 1958, years before Baker got into trouble with the Senate. Sen. John Williams (R.-Del.), who took a leading part in exposing the questionable activities of Baker, says he has looked over his files and "can find no reference which would connect Mr. Haynsworth with Bobby Baker in an improper manner." He has also warned his colleagues to beware of discrediting Haynsworth on the basis of "guilt by association."

CHARGE

The judge has an anti-labor record in his judicial performance. He has sat on 10 cases which were reviewed by the Supreme Court, and in all 10 his posiiton was reversed by the Supreme Court.

REPLY

None of the Supreme Court reversals suggested that the decisions being overturned were "anti-labor." Two of the 10 cases were not even labor-management cases. Besides the cases that went to the Supreme Court, Haynsworth has written eight pro-labor opinions and joined in 37 other pro-labor rulings.

CHARGE

The judge is an opponent of civil rights.

REPLY

There is absolutely no pattern that would establish bias. As in his labor decisions, some decisions were in favor of the party claiming an infringement of civil rights and some decisions were not. Prof. G. W. Foster, Jr., a strong civil rights advocate, has appraised Judge Haynsworth's record in these words: "I have thought of his work, not as that of a segregationist-inclined judge, but as that of an intelligent and open-minded man, with a practical knack for seeking workable answers to hard questions."

CHARGE

There is no difference between the Abe Fortas case and the Haynsworth case.

REPLY

There is all the difference in the world.

Last May, the American Bar Association, in a letter to Sen. John Williams, stated: "The conduct of Mr. Fortas while a Supreme Court justice, described in his statement of the facts, was clearly contrary to the canons of judicial ethics even if he did not and never intended to intercede or take part in any legal administrative or judicial matters affecting Mr. (Louis E.) Wolfson."

Fortas resigned without ever making a public disclosure of all the facts in question.

By contrast, the ABA has supported the Haynsworth nomination. His handling of the Darlington case has also been defended by the ABA and other leading authorities on judicial conflict of interest.

Unlike Fortas, Judge Haynsworth has revealed his financial holdings in a detail that has few if any parallels in the history of judicial confirmations.

Mr. President, those best situated to judge this man both as an individual and as a member of the Federal Judiciary are those who serve with him on the circuit court bench.

On October 9 all six of the judges who have served with Judge Haynsworth on the Fourth Circuit Court of Appeals sent a telegram expressing their confidence in Judge Haynsworth.

This telegram was signed by Judge Simon E. Sobeloff of Maryland, Herbert S. Borman of West Virginia, Albert V. Bryan of Virginia, Harrison L. Winter of Maryland, J. Brackson Craven, Jr., of North Carolina, and John D. Buckzner of Virginia.

Certainly these men are better qualified perhaps than anyone else to judge this man and determine his accreditability as a judge and as a man of character and honor.

This telegram read:

Despite certain objections that have been voiced to your confirmation, we express to you our complete and unshaken confidence in your integrity and ability.

Judge Harrison L. Winter appeared before the committee during the hearings and testified in behalf of Judge Haynsworth and it is well that we be reminded of his remarks for he certainly is in a unique position to determine whether or not Judge Haynsworth is competent and creditable.

On November 10 another eminent jurist, former Associate Justice Charles Whitaker, who served on the Supreme Court from 1957 to 1962 issued a statement setting forth his views on Judge Haynsworth's nomination.

Mr. President, as you know, 16 past members of the American Bar Association have endorsed Judge Haynsworth. These men are leaders in their profession and their endorsement is not a case of a group of men simply wishing fellow practitioner well. These individuals are fully capable of considering all the factors in a given matter and reaching a just and proper conclusion. They have endorsed Judge Haynsworth unreservedly.

This endorsement surely must be given great weight for it emanates from a very distinguished group of gentlemen.

It is interesting to note the places of residence of these men for it indicates that people throughout the United States support this very important nomination. The members are Harold J. Gallagher, New York; Cody Fowler, Florida; Robert G. Storey, Texas; Lloyd Wright, California; E. Smythe Gambrell, Georgia; David F. Maxwell, Pennsylvania; Charles S. Rhyne, Washington, D.C.; Ross L. Malone, New Mexico—General Motors, New York; John D. Randall, Iowa; Whitney North Seymour, New York; John C. Satterfield, Mississippi; Sylvester C. Smith, Jr., New Jersey; Lewis F. Powell, Jr., Virginia; Edward W. Kuhn, Tennessee; Orison S. Marden, New York, and Earl F. Morris, Ohio.

Mr. President, is not the real crime that this man has committed three-fold? First, he is a constitutionalist; second, a capitalist; third, he came from the wrong part of the country.

Mr. President, since it appears that no evidence has been presented by the prosecution and since the accused has clearly demonstrated his innocence, I ask that the verdict of the uncommitted be not guilty as charged.

I ask that those distinguished Members of this body who are now undecided, the jury if you please, base their decision as to how they shall cast their lot on the tenets of justice and equity and not on the basis of political expediency.

To deny the President his choice, to deny to the people of this Nation their choice, a choice dictated by the results of the balloting in the 1968 election, is to break faith with the precepts of this system of government.

Mr. President, I urge that the Senate consent to the nomination of Clement F. Haynsworth, Jr., to be Associate Justice of the Supreme Court of tthe United States.

Judge Haynsworth's character, intelligence, legal knowledge, judicial temperament, and the exemplary manner in which he has filled the duties of the position of chief judge of the Fourth Judicial Circuit qualify him to become a Justice of the Supreme Court of the United States.

Mr. BIBLE. Mr. President, I want to make a brief statement concerning my vote on the Haynsworth nomination.

I am glad to be able to say that throughout my deliberations on this extremely difficult matter I was free of any undue pressures. There was, of course, active interest by the people of my State of Nevada. I received a good cross-section of correspondence, but neither side dominated the other. There was an unusually close division of views, and I am grateful to all who took the time to write.

The constitutional responsibility of the Senate to advise and consent to nominations to the Nation's highest court is heavy at best. It takes on an added dimension in times such as these when—for whatever reason—the Court is the object of concern or uneasiness on the part of too many of our citizens.

I think this is a time for shoring up public confidence in the Supreme Court. This is a time for emphatic reemphasis of the exacting ethical standards demanded of those who serve or aspire to serve as justices of the Nation's highest tribunal.

In the final analysis, the strength of the Supreme Court—the sanctity of the Court as an institution indispensable to our balanced system of government—depends upon the respect and confidence of the people. And this, in turn, depends on the public's respect for individual Justices.

This is no time to dilute the well recognized standards. To do so would be to further damage an already troubled court. Supreme Court nominees must be above reproach. They must be devoted to the Canons of Judicial Ethics. They must demonstrate a refined sensitivity to the ethical standards established to assure not only propriety itself but the appearance of propriety.

Canon 4 commands that—

A judge's official conduct should be free from impropriety and the appearance of impropriety. * * *

Canon 29 provided:

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. * * *

And canon 34 cautions every judge that "in every particular his conduct should be above reproach."

I have read and reread the record generated by this nomination. I cannot in good conscience conclude that Judge Haynsworth meets the high standards, which it is the Senate's solemn obligation to demand.

Last June, Judge Haynsworth testified before a committee of the Senate that when he went on the bench he "resigned from all such business associations I had, directorships and things of that sort." The record makes clear his continuous and active association with Carolina Vend-A-Matic until October, 1963. In view of the Judge's very substantial interest in that firm, I am hard-pressed to believe his words denoted a lapse of memory.

I am also disturbed by the nominee's participation in the Brunswick and other cases.

Judge Haynsworth had a concededly substantial interest in the Brunswick Corp., a litigant before his court—contrary to Federal statute, canon 29, and an explicit holding of the ABA's Committee on Professional Ethics that a judge should not act in a cause in which one of the parties is a corporation in which he is a stockholder.

In addition, the nominee participated in at least five other cases in which he had a stock interest. Between 1958 and 1963 he sat on at least six cases involving customers of the vending machine company he helped organize, which he served as an officer and director, and in which he held high financial stakes. And the hearing record contains testimony that he sat in at least 12 cases involving clients of his former law firm.

It may well be true that no one of these cases provides a sufficient basis for denial of this appointment. I feel, however, that the record as a whole raises substantial and serious questions concerning Judge Haynsworth's sensitivity to the exacting ethical standards we must expect of those who would assume lifetime tenure on the Supreme Court.

I have deemed it my duty to do what I can to preserve the integrity of the Supreme Court, and to resolve these doubts against the nominee. I have done so reluctantly and with a heavy heart, for I have no desire to cast reflections on any man. Judge Haynsworth is an able jurist. This has been for him a regrettable ordeal. For the Nation, and the Senate it has sparked deep divisions, which only time can heal. In his inaugural address the President spoke of the need to surmount what divides us and cement what unites us. I would have preferred that this nomination be withdrawn, and the Nation spared this ordeal.

Mr. GRIFFIN. Mr. President, the vote about to be taken will bring the Senate to a moment of truth to another moment of history.

As the debate on the nomination of Justice Abe Fortas was drawing to a close, I said:

After today, the Senate will stand taller in the scheme of Government. We make it clear that we not only claim, but intend once again to exercise with care and diligence, the Constitutional power of advise and consent.

Regardless of the outcome today, it can be said that the Senate has endeavored with great care and diligence to fulfill its constitutional responsibility with respect to the pending nomination.

The past several months have been a very trying period—for Judge Haynsworth—and for every Member of the Senate.

It has been a trying period because under the circumstances many people may misconstrue or fail to understand the role of the Senate with respect to such a nomination.

Unfortunately, some may believe that the Senate will decide today whether the nominee is honest. No such decision will be made.

No one in this body, to my knowledge, has challenged the honesty of the nominee—and the record on that point should be absolutely clear.

Even with respect to the question of ethics, the Senate will not decide today whether the nominee did—or did not—observe the Code of Judicial Ethics. Our decision will not affect his eligibility to sit as a judge on the Fourth Circuit Court of Appeals.

The single and only question before the Senate is this: Does the Senate believe the nominee should be promoted to the Supreme Court of the United States?

Justice Samuel F. Miller, who was named to the Supreme Court in 1862 by President Lincoln and who was one of the Court's greatest members, once said:

The judicial branch of the government is, of all others, the weakest branch. It has no army; it has no navy; it has no press; it has no officers except its marshals. . . . So far as the ordinary forms of power are concerned, (it is) by far the feeblest branch or department of the government. . . . *The Judiciary (must) . . . rely on the confidence and respect of the public for (its) weight and influence in the government.*

Because that is true, the Senate need not find a nominee guilty of anything. But it is important that the Senate should resolve reasonable doubts against any nominee—and in favor of preserving and promoting public confidence in the Supreme Court.

At no time in history has this principle been more important.

If the nominee should be confirmed by the vote today, he will have my sincere best wishes as he serves in a new role as Justice of the Court.

On the other hand, if the vote should go against him—it will decide nothing more than that the Senate does not wish to consent to this nomination.

Mr. GURNEY. Mr. President, I ask unanimous consent to insert into the RECORD a very penetrating editorial which appeared in the Tampa Tribune on Monday, November 17, 1969. The editorial concerns the nomination of Judge Haynsworth to the Supreme Court and is entitled, "A Victory for Pressure, Defeat for Fairness."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

VICTORY FOR PRESSURE, DEFEAT FOR FAIRNESS

When the Senate votes this week on the nomination of Judge Clement F. Haynsworth to the Supreme Court, it will come face to face with this issue:

Are organized labor and civil rights groups to hold a veto over Supreme Court appointments?

No matter what may be said in debate, that is the underlying question.

Much has been made of "conflicts of interest" in Judge Haynsworth's service on the Fourth Circuit Court of Appeals.

But the "conflicts" occurring in Judge Haynsworth's various stock holdings are so technical that they constitute an excuse, not a reason, for Senators to vote against him.

Consider the two principal complaints that have been raised against Judge Haynsworth.

That he cast the deciding vote in a 1963 decision permitting a textile firm to close one of its plants, in a labor dispute, although he owned an interest in a vending machine company doing business with the textile firm. Judge Haynsworth's personal stake in the profits from the vending contracts with the textile firm was estimated at $390; his role in the case was cleared by the Justice Department.

That he bought stock in the Brunswick company while a law suit by the company was pending before his court. The facts are that the case, involving foreclosure proceedings against a bowling alley, had been unanimously decided in the company's favor before the stock was purchased, although the decision had not been published. Judge Haynsworth admits the purchase was a mistake—but inasmuch as the benefit to his stock interest from the foreclosure suit amounted to a total of $4.96, he could hardly be suspected of venal intent.

No reasonable person, examining the whole record of Judge Haynsworth's conduct, could reach any conclusion other than that he is an honorable man.

It is pure hypocrisy for Senators who never uttered a word in criticism of Justice Douglas' $12,000-a-year handout from a gambling-financed foundation to express concern about Judge Haynsworth's "conflicts."

Some are honest enough to say, as Senator Jacob Javits of New York did last week that they oppose Haynsworth because of his philosophy.

Javits joins the NAACP and other civil rights groups in interpreting Haynsworth's philosophy as being "relentlessly opposed" to the Supreme Court's integration decisions.

We do not so interpret it. We think Judge Haynsworth's opinions show that he has attempted to apply the principle laid down by the Supreme Court in a manner fair to both

races; he has *not* adopted the extreme view that it is the duty of the court to remake the social system rather than simply forbid compulsory segregation.

In the same way, we think Judge Haynsworth has attempted to render balanced judgments in labor-management disputes.

But balance is not what labor bosses or civil rights zealots want in a judge. They want bias—in their favor. They want a judge who proceeds on the theory that unions and minorities enter the courtroom clothed in a presumption of right.

Thus we find, one by one, Senators who are dependent on labor and Negro support lined up against Haynsworth. One of his chief critics, Senator Birch Bayh of Indiana, is said to have received $70,000 in campaign funds from labor unions in his last election.

The Senate vote will be close and the present outlook is that Judge Haynsworth will lose.

If so, we cannot say that the Supreme Court would be deprived of another John Marshall or Oliver Wendell Holmes. But a rejection of Judge Haynsworth would be a victory for organized pressure groups and a defeat for fairness—and the cause of justice would be the ultimate loser.

Mr. BAYH. Mr. President, I think we are on the verge of concluding what could be accurately called one of the most heated and hectic debates that I have witnessed during my 7-years in the Senate.

There have been charges and countercharges. There have been charges of pressure from this side and charges of pressure from that, and very frankly I think it would be rather naive not to recognize that some of those charges have a basis in truth, as to both sides. But I think it is also fair to say that pressure is not unfamiliar to the Members of this body. This is not the first experience of pressure on any one of us. I think most of us have conditioned ourselves to it. We have lived with it, and we expect it. This is the democratic process, and it is natural for our constituents and the various voices in the field to express themselves. In the final analysis, when this roll is called, we are going to do what we think is right, however intensely this proposition may have been argued over the past weeks.

I became involved in this controversy, of course, as a member of the Committee on the Judiciary. That committee has the obligation to screen the nominees to the judicial branch as part of the important advise-and-consent procedure.

Being only human, I suppose I shall have to confess to my colleagues in the Senate that I have not relished certain aspects of this matter. The barbs of criticism have been thrown at me; but I suppose when you get involved in something like this, you should expect to be criticized.

I have been deeply concerned by the criticism which has been leveled by some of my colleagues, who apparently have concluded that it is impossible for me to arrive at an honest and sincere conclusion on the matter. I say I am concerned about that because I value my relationship with each Member of this body. When one becomes involved in a controversy which damages the very credibility one shares with his colleagues, the damage cannot easily be repaired.

To those who might be concerned about the sincerity of the Senator from Indiana, let me suggest that some of the matters which I have felt compelled to raise have also been raised by others. Just last evening, the distinguished senior Senator from Kentucky (Mr. COOPER) came to the floor with a handwritten speech in which he said in part:

It may be said that the standards on which I base my decision should not apply to this nominee as they are standards which did not prevail at the time the cases to which I have referred were before him. I answer by saying that the standards were applicable at the time.

What is at issue is whether judges will observe them, and I am confident that the overwhelming majority do; and what is at issue is whether the Senate will apply strictly the standards of the statute and the canons.

So speaks the Senator from Kentucky.

Earlier the Senator from Delaware (Mr. WILLIAMS) had spoken with equal eloquence of his concern that this nominee had not adhered to the standards which were generally accepted throughout this country, and which he personally felt the Senate of the United States should require of a prospective Supreme Court justice.

The distinguished minority whip has been one of the more eloquent spokesmen in expressing concern. If there was ever a Member of this body who was in a difficult position, it had to be our distinguished colleague from Michigan. Yet he spoke eloquently about his desire that we reach for a higher standard than that which had been set by the nominee.

Our distinguished colleague from Idaho (Mr. JORDAN), in what I am sure was also a difficult decision, said:

However, after carefully studying the Judiciary Committee hearings on the nomination, grave doubts arose in my mind as to the wisdom of elevating Judge Haynsworth to the Supreme Court. These doubts are based on my belief in the importance of maintaining public confidence in our judiciary, and my judgment that Judge Haynsworth has failed to appreciate how easily this confidence can be undermined by even the appearance of impropriety on the part of our judges.

Mr. President, it has been suggested by some that the Senator from Indiana has maligned the character of this jurist. Certain very illustrious citizens of this country have called me a character assassin. Certain Members of this body have suggested that I have accused the judge of trying to feather his own nest by deciding cases in a manner that would be to his own best interest.

If one examined everything I have said—not a sentence here, a part of a sentence there, or an inference here or there—I do not see how such a conclusion could be reached. I have said repeatedly that I do not believe that Judge Haynsworth is the type of man who would calculatedly make his decision in a case dependent upon whether or not the decision was in his financial interest.

What concerns me is whether or not this judge has established that degree of sensitivity that is absolutely indispensable if we want to insure the confidence of the people of this country in the courts. Has he, indeed, avoided the appearance of impropriety, as defined in the Canons of Ethics?

It has been suggested that we should not consider the Canons of Ethics. This, of course, is a determination each Senator must make for himself. But this Senator is concerned about what the Canons of Ethics say about the appearance of impropriety.

I think, to put the issue in proper perspective, I might refer briefly to the facts as I see them. It seems to me that the facts are almost indisputable, though Senators can look at them from different standpoints. The question is not what the facts are, but whether the individual Members of this body, in looking at those facts, believe that they constitute a breach of the standards that they set for themselves, and that they want to see set for the Supreme Court.

The Brunswick case has been discussed with some degree of particularity. It involves a thousand shares of Brunswick stock which were purchased before a final determination had been reached by the judge and his colleagues.

I have talked with a number of appellate court judges, and they have suggested that on numerous occasions an opinion has been changed after the informal decision had been reached in the courtroom. There seems to be unanimous feeling among them that a decision is not final until after it has been published and the motions for new trial and the various legal petitions have been denied. Those who have studied the record have to recognize the fact that Judge Haynsworth himself said that he felt he had a substantial interest in the Brunswick case, that he had made a mistake, and that if he had that to do over again, he would not do it.

The Grace Lines case involved an interest of $13,875 in the parent corporation of a subsidiary that was before the judge. The Maryland Casualty cases—there were two of them—involved a $10,700 investment in the parent of a subsidiary corporation that was before the judge.

The Carolina Vend-A-Matic case is a different type of case, in which the interest was one step removed. The judge was an original founder of a company. His holdings were worth $450,000. He was a director; he was the vice president; his wife was secretary for 2 years. This corporation was doing $100,000 of business with Deering-Milliken, at the time the Darlington case was decided. The Darington Mills case, as has been described by our distinguished colleague from North Carolina, was a landmark case in textile law.

Given this involvement with Carolina Vend-A-Matic, given the fact that the Judge had significant stockholdings in three or four textile firms, given the fact that Carolina Vend-A-Matic was doing $2 million worth of business with textile firms, it seems to me that there was a matter which breached the standard of ethics which were set for the courts long ago.

Mr. BYRD of West Virginia. Mr. President, may we have order?

The VICE PRESIDENT. The Senate will be in order.

Mr. BAYH. Mr. President, in looking at

this issue, we have studied the rather succinct statements of Professor Mellinkoff from UCLA, the statement of Dean Lewis Pollock of the Yale Law School, and the opinion of 19 law professors from five different universities. They all suggest that the judge violated the necessary standards of ethics.

I think we have determined that section 455 of title 28, United States Code, has been breached. I refer to three Supreme Court decisions which have defined substantial interest. These are: the Commonwealth Coatings decision, the Murchison decision, and the Tumey decision. I am particularly interested in one passage from the Commonwealth Coatings case. In examining a financial relationship, which amounted to 1 percent of an arbitrator's income and which was not a current relationship, the court suggested:

> We have no doubt that if a litigant could show that a foreman of a jury or a judge in a court of justice had, unknown to the litigant, any such relationship, the judgment would be subject to challenge.

Mr. President, my time has about expired but I would like to make one final observation. Perhaps the matter of deepest concern from the opening day of the hearing until this, the final hour of debate, has been the effect that this controversy and indeed my personal participation in it would have on the future of Judge Haynsworth. Only the most naive among us would refuse to recognize that our opposition must have some impact on the nominee. This fact has made the burden of my opposition greater. I sincerely hope that the personal impact upon Judge Haynsworth will be minimal. I hope he will continue serving on the fourth circuit. In fact, I hope that he will take advantage of this opportunity to prove that those of us who have opposed him have been erroneous in our judgment.

But in this body each of us has the obligation to do what he must—to do what he thinks is right. In my judgment, the personal impact on Clement Haynsworth, the personal impact on the prestige and reputation of the President and, indeed, the personal impact on the Senator from Indiana should not be significant factors in our decisions. Our obligation is to the Senate and to this country. And I trust that each of us will cast his vote yea or nay with that sole thought in mind.

The VICE PRESIDENT. All the time allotted to the Senator from Indiana has expired.

The Senator from Nebraska has 7 minutes remaining.

Mr. HRUSKA. Mr. President, at this late hour in the debate which has consumed weeks and weeks, not much could be said which would be new. It would not be possible for any ordinary mortal to say anything that would change the minds of Members of the Senate.

A good part of the debate has been centered on the matter of disqualification of a judge—when should it occur and when should it not occur?

The record clearly shows—and we have some of the most eminent authorities testifying on this point—that there are two points of view. One is the so-called soft approach, and the other is the hard approach.

The soft approach is described by Professor Frank as follows:

> A judge, even though blessed with all of the virtues any judge ever possessed, should not be permitted to exercise judicial power to determine the fact of his own disqualification . . . and it is better that the Courts shall maintain the confidence of the people than that the rights of the judges and the litigant in a particular case be served.

This is a viewpoint that has been urged by the opponents of the confirmation. But it is not the rational policy that has been in effect since the beginning of the Federal courts. The proof of this is found in section 455 of chapter 28 of the United States Code. And Professor Frank explained the policy in this way:

> Due consideration should be given by him (the judge) to the fact that the Administration of Justice should be beyond the appearance of unfairness. But . . . there is, on the one side, an important issue at stake; that is, that causes may not be unfairly prejudiced, unduly delayed, or discontent created through unfounded charges of prejudice or unfairness made against the Judge in the trial of a cause.

Professor Frank concludes by saying:

> But these two systems exist side by side in the United States and what we need to know, because it is. . . .

Mr. BYRD of West Virginia. Mr. President, may we have order?

The VICE PRESIDENT. There will be order in the Senate.

Mr. HRUSKA. Professor Frank stated:

> But these two systems exist side by side in the United States and that we need to know, because it is rather controlling for the judgment which you Senators are now making, is that the Federal government from the beginning has taken the so-called. . .

The VICE PRESIDENT. Please, may we have order in the Senate. The galleries will be quiet.

Mr. HRUSKA. Mr. President, Professor Frank stated:

> But these two systems exist side by side in the United States and what we need to know, because it is rather controlling for the judgment which you Senators are now making, is that the Federal government from the beginning has taken the so-called hard qualification view, and has added to that point of view the position which really is the most controlling single matter in the case before you, and that is that unless the Judge is disqualified in the strict sense, he has an absolute duty to sit.

Mr. President, one of the characteristics and, in fact, the essence of law, whatever form law takes—whether it is statute or court rule or a court decision or a canon of ethics—is that it must be sufficiently definite to enable one who is governed by that law to be able to determine what conduct is required of him and what conduct is denied to him in order to comply with that law.

It was rather distressing during the course of the debate to hear the statement: "Well, it is true that there was no violation of title 28, United States Code, section 455, but the principle of the statute has been violated."

Mr. President, what is the principle of a statute to one man is not the principle to another man. And the reason we have printed words to reflect the meaning of a statute is to be able to understand and comply with that standard that we must have in all law.

The same thing is true of canons of ethics. How can it be said that no canon has been violated exactly, but that the appearance of evil has been created, and Judge Haynsworth had put himself into a position of reproach?

What appearance will mean to one man, is different than it will mean to another man. Judging by "appearance" means making the rules as we go along. It is too highly subjective.

Mr. President, very distinguished authorities, impartial observers, and liberal observers have found Judge Haynsworth to be qualified by virtue of his decisions to sit upon the highest court of the land.

There is one final proposition that I would like to suggest. Where do we go from here, if there is a rejection of the nominee? It will amount to a rejection of the President's plan to make appointments to the Supreme Court which will restore balance.

It is what the President wants. It is what the Nation wants. And it just seems to me that the rejection of this man would be a rejection of a popular approach and that another nominee will be forthcoming.

If there is a rejection of this nominee, what will the test of the next nominee be? Will there be an application once again of these indefinite and subjective rules? If these rules are applied again, there conceivably will be a total immobilization of the power and the capability of the Senate to advise and to consent.

If we consider this alternative together with the outstanding record and the constructive assessment of this nominee a man of integrity and honesty, there is every reason why we should confirm the nomination. The reasons have been more fully expressed in the majority report of the Judiciary Committee which was approved by a vote of 10 to 7.

PROGRAM

Mr. SCOTT. Mr. President, as in legislative session, I rise to ask the distinguished majority leader what the order of business is for today following the vote and for next week.

Mr. MANSFIELD. It is my understanding that conversations are now going on concerning H.R. 7491, an act to clarify the liability of national banks for certain taxes. A decision on that should be ready after the pending nomination is disposed of.

Then it is the intention to lay before the Senate the tax relief and tax reform bill, and to start debate on that Monday.

There is a very strong likelihood that on Monday, Tuesday, and Wednesday of next week there will be amendments to the tax reform-tax relief bill, and I set that out for the information of Senators, so that the Senate will be fully informed.

Mr. SCOTT. I thank the Senator.

SUPREME COURT OF THE UNITED STATES

The Senate in executive session resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The VICE PRESIDENT. All time on the nomination has expired.

The question is, Will the Senate advise and consent to the nomination of Clement Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States?

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The VICE PRESIDENT. The Chair wishes to caution the gallery that there will be no outbursts at the announcement of this vote.

The legislative clerk called the roll.

The result was announced—yeas 45, nays 55, as follows:

[No. 154 Ex.]

YEAS—45

Aiken	Ellender	Mundt
Allen	Ervin	Murphy
Allott	Fannin	Pearson
Baker	Fong	Prouty
Bellmon	Fulbright	Randolph
Bennett	Goldwater	Russell
Boggs	Gravel	Smith, Ill.
Byrd, Va.	Gurney	Sparkman
Byrd, W. Va.	Hansen	Spong
Cook	Holland	Stennis
Cotton	Hollings	Stevens
Curtis	Hruska	Talmadge
Dole	Jordan, N.C.	Thurmond
Dominick	Long	Tower
Eastland	McClellan	Young, N. Dak.

NAYS—55

Anderson	Hughes	Nelson
Bayh	Inouye	Packwood
Bible	Jackson	Pastore
Brooke	Javits	Pell
Burdick	Jordan, Idaho	Percy
Cannon	Kennedy	Proxmire
Case	Magnuson	Ribicoff
Church	Mansfield	Saxbe
Cooper	Mathias	Schweiker
Cranston	McCarthy	Scott
Dodd	McGee	Smith, Maine
Eagleton	McGovern	Symington
Goodell	McIntyre	Tydings
Gore	Metcalf	Williams, N.J.
Griffin	Miller	Williams, Del.
Harris	Mondale	Yarborough
Hart	Montoya	Young, Ohio
Hartke	Moss	
Hatfield	Muskie	

So the nomination was rejected.

Mr. ALLOTT. Mr. President, we have just had a vote on a very important question, and of course there is no useful purpose in trying to reargue the questions on that matter. However, there is one discrepancy which has occurred in this whole matter to which I feel it my obligation to call very serious attention.

In Newsweek there appeared an article on the Haynsworth matter in which the junior Senator from Kentucky (Mr. COOK) was quoted, and which I am informed is not the truth. The article takes the President's counsel, Clark Mollenhoff, to task very severely.

While no man, of course, makes points by losing his temper—and I believe Mr. Mollenhoff did on that occasion—I want to call the attention of the Senate to the alleged facts which were contained in the Mankiewicz-Braden article, which were in issue in Mr. Mollenhoff's television appearance and then compare them with the facts with respect to the situation as it existed. In issue was the transfer of certain property which Judge Haynsworth bought from Furman University, from which he graduated.

The Mankiewciz-Braden article is so slanted with little words that the only conclusion anyone can draw from it is that Judge Haynsworth was indulging in a lot of hanky-panky to deprive the Internal Revenue Service of tax dollars it justly deserved. In fact, the article says that.

Mr. President, for many, many years, gifts made by people to educational institutions have been a valid legal deduction under our income tax system. This article points out that if it can be demonstrated that it was not done by prior arrangement, it was perfectly legal.

What happened was that in 1958 Senator and Mrs. Charles Daniel started the construction of a home, and then conveyed their home in 2 years, half each year, to Furman University at a price of $115,000. Some time after that, as a matter of fact, 11 days after they received the deed, or the deed had been recorded, Judge Haynsworth purchased that house from Furman University, and in return gave his own house plus $65,000 in cash to Furman University.

The Mankiewicz-Braden article is so slanted as to be classified completely irresponsible, if not a purposeful attempt to mislead the American people. At one place it reads:

> The process of transfer was arranged over a five-year period, during each of which years Haynsworth donated a one-fifth interest, stating the total value of the property still at $115,000. He claimed a charitable deduction in each of the five years.

If one takes that statement on the face of it, there still is nothing wrong with anything Judge Haynsworth did, but it does not state the truth. If I had been in the position of Mr. Mollenhoff on that newscast with those two particular columnists who had written such things, I think I would have felt the same indignation, the same righteous anger—and it was righteous anger—that he felt at that time.

The article goes on to say:

> On April 1, 1968, Haynsworth completed the transaction with a deed of the entire property, as a part of which he and Mrs. Haynsworth retained a life estate—the right to live in the residence as long as either is alive.

When you look at these two paragraphs, it is apparent that the plain and obvious attempt of this misleading article is to make people believe that Judge Haynsworth somehow trimmed the taxpayers of this country in the transaction. The truth is that Judge Haynsworth did have a house, which he traded to the university. After he bought the former Daniel house, he and his wife invested $10,000 in it, in air conditioning and other improvements, and he still, when he sold the house, valued it at $115,000. Anyone knows that Judge Haynsworth bent over backward to be more than fair in his evaluation.

The point of it is that out of these two transactions, Furman University got $115,000 twice—once from the Daniel family—the house—and once from the Haynsworth family, in cash and other tangibles. Judge Haynsworth bought the house, improved it and then turned around and gave it back to the one who had sold it to him. There is an implication here that his home might not have been worth $115,000 but the facts are that the university got $65,000 in cash, and they got $50,000 for the home which Judge Haynsworth gave them in addition to that. It is unarguable that Judge Haynsworth traded off a home which, at that time, in market value, was worth perhaps as much as $150,000. They had paid $115,000 for it in cash, and they put in $10,000 or more in improvements.

Referring back to the first paragraph I read, he said he claimed a charitable deduction, and this is wholly in the context of $115,000 over the 5 years.

This article is what Mr. Mollenhoff called a fraud. It is a fraud on the public, because actually Judge Haynsworth did not take a deduction for a charitable contribution of $115,000, but rather he only took a charitable deduction of $52,673.44, which is the $115,000 diminished by the amount that the life estate involved. So his charitable deduction was less than 50 percent of the actual amount that the university did receive by reason of the contribution. We could not fault him if he had claimed the entire $115,000 but, contrary to the Braden-Mankiewicz report to which I have referred, he actually made allowance for the life estate he and Mrs. Haynsworth retained. A life estate, of course, is a right of use during their lifetime, and Judge Haynsworth therefore discounted the $115,000 by an amount calculated on the basis of the life expectancy of he and his wife, regardless of how long they really might use it. Braden and Mankiewicz did not mention this, however in giving the public the "true facts."

I think the actual facts should be made clear at this point, Mr. President. I think a great injustice has been done to Mr. Mollenhoff, a Pulitzer Prize winner, a man who had researched this matter to be sure that Judge Haynsworth had not done anything improper, and who knew the facts, which obviously Mr. Braden and Mr. Mankiewicz did not know, even though they purported to.

Therefore, Mr. President, I ask unanimous consent to have printed in the RECORD at this point, first, the article published in Newsweek magazine entitled "The Judge Come to Judgment," calling particular attention to the last four paragraphs of it, in which Mr. Mollenhoff is referred to. Second, to have printed, the Frank Mankiewicz-Tom Braden column of November 9, 1969, which is entitled "The Strange Case of Haynsworth's House"; and third, an absolutely factual analysis of what did actually occur. If any American can read these three items without becoming fully convinced that it was the desire and the purpose of Mankiewicz and Braden to downgrade and degrade Judge Haynsworth, and that in doing so they have distorted the facts unmercifully, then I

think I am incapable of reading the English language. In view of such an article how can the news media take exception to some of the recent remarks of Vice President AGNEW? I believe the rejection of the Haynsworth nomination demonstrates the seriousness of the problem.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

THE JUDGE COME TO JUDGMENT

Across Lafayette Square from the White House, in the stolidly modern headquarters of the AFL–CIO, President George Meany lit up a fat cigar, gazed contentedly at a fresh tally sheet and proclaimed: "I'm convinced now. We've got this one made." Next door to the White House, in the Executive Office Building, Richard Nixon's chief political operative, Harry Dent, confided to a friend over the telephone, "For the first time now, I feel we might pull this thing off." Thus last week, the top lobbyists both against and for the confirmation of Clement F. Haynsworth Jr. as a Justice of the Supreme Court professed optimism as they prepared to rest their case and await the verdict of the U.S. Senate.

Both sides brandished Senatorial head counts. Meany's lieutenants claimed 53 votes against confirmation, two more than necessary to defeat the mild-mannered South Carolina judge whose nomination to the High Court stirred up a bitter controversy over the judicial ethics of some of his stock transactions. Administration strategists totted up 47 senators definitely for Haynsworth and expected to be able to wrench loose at least three more from the ranks of the undecided; that would set up a tie to be broken in the Administration's favor by Vice President Spiro Agnew. Within the Senate itself, the prevalent hunch was that when the roll is called, probably this week, the noes would have it and the President would be faced with his first major rebuff from Congress. But no one was ready to predict more than the slimmest of majorities either way.

Bias: The pressure, consequently, was fierce. Labor unions, which contended that some of Haynsworth's decisions betrayed an antilabor bias, passed the word to Democratic senators and even some Republicans that the rich union campaign coffers might snap shut at the blink of an "aye." Dent, GOP National Chairman Rogers Morton and Texas Sen. John Tower, head of the Senate Republican Campaign Committee, canvassed GOP county chairmen and private contributors throughout the country, prompting them to loose a relentless barrage of pro-Haynsworth telegrams and phone calls upon Republican senators.

The Administration artillery managed to score some hits. Kansas Sen. James Pearson, who had let it be known he was inclined against Haynsworth, suddenly discovered GOP leaders back home talking up a serious primary challenge against him in 1972 if he flunked the Haynsworth "loyalty test." All the judges on the Kansas Supreme Court informed him of their support for Haynsworth. "I even got a letter from Alf Landon," Pearson told NEWSWEEK's chief Congressional correspondent Samuel Shaffer in wonderment, and last week he announced he would vote for confirmation, albeit "with some concern," because he had found his state "overwhelmingly in favor" of the appointment.

Freshman Ralph Smith of Illinois, who faces a tough election next year, was also wobbling noticeably after having initially stood up firmly against the judge. And Connecticut's Tom Dodd, whose disposition to antagonize the Justice Department is not exactly stiffened by his past troubles over the misuse of campaign funds, somehow contrived to make solemn commitments to both sides. However, other senators angrily shook off the lobbyists' powerful grasp. "They've got the wrong sow by the ear," huffed Ohio's William Saxbe. "I don't fetch and carry when some fat cat calls up and tells me what to do."

Not all of the lobbying was so ungentle. In the midst of pondering his decision, Kentucky's John Sherman Cooper, one of the key senators still undeclared on Haynsworth, placed a filial phone call to his 91-year-old mother. "Now you be sure to vote right, John," the lively Mrs. Cooper admonished.

"What do you mean by 'right,' Mother?" he asked.

"Why, I mean you should vote against him. It's a bad nomination."

Many senators, even some on Haynsworth's side, took umbrage at what they considered maladroit handling of the case in the White House itself. Chief target of their wrath was deputy Presidential counsel Clark Mollenhoff, the intense ex-newsman who has taken on the task of rebutting the charges against Haynsworth. Along with Kentucky Sen. Marlow Cook, a strong Haynsworth supporter, Mollenhoff appeared on a Washington television interview last week and lashed out so vituperatively against some of the interviewers that the transcript of the show reads, at one point, "Mass confusion—not transcribable." Cook, upset by Mollenhoff's behavior, canceled a dinner engagement, went straight home and telephoned a White House aide. "The Administration has the power to hire," he said tartly. "I assume it also has the power to fire. I urge you to fire your deputy special counsel."

THE STRANGE CASE OF HAYNSWORTH'S HOUSE

(By Frank Mankiewicz and Tom Braden)

WASHINGTON.—Among the ways in which men with large incomes avoid taxes is to buy and sell property through tax-exempt institutions, claiming charitable deductions along the way. Judge Clement Furman Haynsworth Jr. now lives in a home which has twice been donated to Furman University and the value of which has twice been claimed as a charitable deduction.

The property passed from the late Charles Daniel, a close friend and associate of Haynsworth to Furman University. The university held the property for 11 days before selling it to Haynsworth, who then gave it back to the university. Both Haynsworth and Daniel took charitable deductions from their income taxes; the university got a contribution, and everyone was better off except—to be sure—the Internal Revenue Service.

Tax lawyers say that if the Daniel-Furman-Haynsworth series of transfers was properly and carefully documented, and if it can be demonstrated that it was not done by prior arrangement, it was perfectly legal. Here is how it worked:

Daniel, who served a brief term by appointment as U.S. senator from South Carolina and who accompanied Haynsworth to Washington when the judge was up for confirmation to the Court of Appeals in 1957, owned a home in Greenville which he valued at $115,000.

The property was held in the name of Mrs. Daniel, and it was donated in her name to Furman in 1958 and 1959, the Daniels claiming one-half the value as a charitable deduction in each year.

The deed of gift to Furman was recorded on May 1, 1960, and Haynsworth bought the property 11 days later, on May 12, trading his own house—which he valued at $50,000—to the university and adding $65,000 in cash to make up the sales price of $115,000.

In 1964, the year Daniel died, Haynsworth began to donate the property back to Furman. At that time he was a member of the advisory council to the university and the director of the Furman Charitable Trust, a foundation which has donated substantially to the university.

The process of transfer was arranged over a five-year period, during each of which years Haynsworth donated a one-fifth interest, stating the total value of the property still at $115,000. He claimed a charitable deduction in each of the five years.

On April 1, 1968, Haynsworth completed the transaction with a deed of the entire property, as a part of which he and Mrs. Haynsworth retained a life estate—the right to live in the residence as long as either is alive.

So Daniel wound up paying no tax on the transfer of his property and in addition was able to take a tax deduction of $115,000; Judge Haynsworth has a house in which he and his wife may live for their lifetime—and to offset the purchase price he, too, has had a shelter for income for five years; the university has some cash and will one day have the property.

The legality of all this depends on the arms' length nature of the transactions. Haynsworth was at no time in a position to deal at arms' length with Furman, some of whose gifts he helped to manage and whose president he regularly advised.

As to Daniel, of course, the situation may well be different, although Daniel—an "Eisenhower-Democrat" like Haynsworth—was a sponsor of Haynsworth for appointment to the Circuit Court. And the 11-day gap between Daniel's gift of the house and Haynsworth's purchase does raise a question as to whether or not it was all coincidence.

All that is certain is that in this matter, as in Carolina Vend-A-Matic and the companies whose stock he held while he ruled on their cases, Haynsworth managed his affairs in such a way as to give his supporters a record about which the best they can say is that it was all legal.

HAYNSWORTH HOME GIFT

In 1958, Senator and Mrs. Charles Daniel started construction of a large new home in Greenville, South Carolina. At that time Mrs. Daniel, who held title to the home in which they were living, gave a one-half interest in that home to Furman University. In 1959, Mrs. Daniel gave Furman University the remaining one-half interest in the old Daniel home.

The deductions for these gifts were taken on the Daniel tax returns in 1958 and 1959, but the deed was not recorded until May, 1960. The delay in recording the deed was at the request of Mrs. Daniel, who did not want publicity in connection with the gift of the home to Furman University.

In May, 1960, Judge Clement F. Haynsworth, Jr., purchased the Daniel home for the appraised value of $115,000. Furman University had no need for this type of home, but did need the money and accepted Judge Haynsworth's offer. In purchasing the home, Judge Haynsworth gave the university $65,000 in cash along with his former home, which had an appraised value at that time of $50,000. (The former Haynsworth home was actually sold by the university for $50,000, so this was not an imaginary figure.)

There was no arrangement or even discussion between Senator Daniel and Mrs. Daniel and the Haynsworths in connection with the gift of the house to Furman and the subsequent purchase by Judge Haynsworth. The Daniels, looking forward to moving into a new and much more elaborate home, permitted the old home to fall into disrepair in the last two years they were living in it, while paying rent to the university.

Upon moving into the old Daniels' home in June of 1960, Judge and Mrs. Haynsworth improved it with remodeling, air conditioning, and landscaping. The total cash outlay in connection with these improvements were in excess of $10,000.

In 1963, the Haynsworth concluded that

the children were not coming home to Greenville to live, and they then decided to give the home to Furman University and retained a life estate. Under this arrangement, Judge Haynsworth and Mrs. Haynsworth retained the right to live in the house during his life and her life; during that time they were liable to pay real estate taxes, other taxes, insurance, and maintenance on the property.

In 1963, Judge and Mrs. Haynsworth held clear title to the home for which they had paid $115,000, and upon which they had expended more than $10,000 for improvements. The appraised value at that time was $153,000, and the replacement value was $184,000.

Judge and Mrs. Haynsworth could have retained the home for their estate. They could have sold it for something in the neighborhood of $153,000. They could have made a gift of the home to any university, including Furman University, and claimed something between $125,000 (which includes the more than $10,000 cash outlay) and the $153,000 (appraised market value) as a tax base for deductions on federal tax returns. Judge Haynsworth chose to give the home to Furman University, the school from which he was graduated and which was named after one of his ancestors. His close relationship with the university, and his membership at that time on the University Advisory Council, was no barrier to him making a gift of the family home to the university while retaining a life estate for himself and his wife.

Judge Haynsworth passed up the legal right to claim the "market value" of $153,000 on the home as the base for his tax deduction. Instead, he took the $115,000 figure, which represented the sum he paid for the home in 1960. He arranged to take the deduction over a five-year period as provided in the Internal Revenue Service laws and regulations.

Pursuant to a table prepared by the IRS, Judge Haynsworth took the following deductions:

1963	$9,844.46
1964	10,125.98
1965	10,414.00
1966	10,996.00
1968	11,294.00
Total	52,673.44

The variations follow the IRS tax table where a life estate is retained by persons of the ages of Judge and Mrs. Haynsworth.

Instead of being an illegal or questionable act, this was a commendable act. Judge Haynsworth had no conversations or arrangements with Senator Daniel in connection with his purchase of this house, and all of the evidence indicates that these were two separate and unrelated gifts of the same home to Furman University.

Judge Haynsworth is not now and has never been a trustee of Furman University.

Since early 1961, he has been a member of a Furman University Advisory Council. This council was established by the university in October, 1960, five months after Judge Haynsworth had purchased the old Daniel home. Judge Haynsworth was appointed to this council in early 1961 and has served on that council since that time.

This Advisory Council is a "visiting board" with no authority in the operations and administration of the university. It has only the authority to advise and recommend.

At the time he purchased the Daniel home in May, 1960, Judge Haynsworth had no official connection with Furman University other than that of a loyal alumnus and as a public spirited citizen of Greenville who consistently contributed money to support this local educational institution.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. ALLOTT. I am happy to yield to the Senator from Kansas.

Mr. DOLE. I simply wanted to say to the Senator from Colorado that I think perhaps this was a part of the effort to create the appearance of impropriety, which was successfully done. I do hope that by the Senate action today, we have not destroyed Judge Haynsworth's future.

That is the only comment I have.

Mr. HATFIELD. Mr. President, during the past 3 months I have listened to the debate regarding the nomination of Judge Haynsworth, participated in colloquy and discussion, and wrestled with the decision that confronts me.

I believe the President has responded appropriately to the challenge of creating a more vital balance in the philosophy of the Nation's Highest Court. When President Nixon nominated Warren Burger, a "strict constructionist" or judicial conservative, for Chief Justice, I endorsed him warmly and gave him my full support.

As the chief executive of the State for Oregon for 8 years, I made nearly 100 judicial appointments. In each case, I sought to weigh their legal expertise, their philosophy, and, of particular importance, their personal character as I made these decisions. I have employed these same criteria as I have given long and serious thought to the nomination of Judge Haynsworth.

I have not been overwhelmed by the consistently clear logic or irrefutable evidence on either side of this case presented to the Senate. Valid questions and objections have been raised, and a thorough-going defense of Judge Haynsworth has been offered.

As I have considered the total picture, it has now become my strong conviction that the debate within this body, the deep division throughout the country, and the doubt, discord and polarization created by this issue have destroyed the possibility of effective service by Judge Haynsworth on the Supreme Court.

In the same manner, it became apparent that Justice Fortas no longer could function constructively after serious ethical questions had been raised, focusing public concern on the integrity of the Court.

This nomination will not reestablish the trust and respect that is needed so gravely today for our Nation's Highest Court. For the sake of the Court, I opposed it.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

LIABILITY OF NATIONAL BANKS FOR CERTAIN TAXES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 523, H.R. 7491. I do this so that the bill may be the pending business.

The PRESIDING OFFICER (Mr. DOLE in the chair). The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 7491) to clarify the liability of national banks for certain taxes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Banking and Currency with an amendment to strike out all after the enacting clause and insert:

TAXATION OF NATIONAL BANKS

SECTION 1. (a) Section 5219 of the Revised Statutes (12 U.S.C. 548) is amended by adding at the end thereof the following:

"5. (a) In addition to the other methods of taxation authorized by the foregoing provisions of this section and subject to the limitations and restrictions specifically set forth in such provisions, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision (other than a tax on intangible personal property) on a national bank having its principal office within such State in the same manner and to same extent as such tax is imposed on a bank organized and existing under the laws of such State.

"(b) Except as otherwise herein provided the legislature of each State may impose, and may authorize any political subdivision thereof to impose, the following taxes on a national bank not having its principal office located within the jurisdiction of such State, if such taxes are imposed generally throughout such jurisdiction on a nondiscriminatory basis:

"(1) Sales taxes and use taxes complementary thereto upon purchases, sales, and use within such jurisdiction.

"(2) Taxes on real property or on the occupancy of real property located within such jurisdiction.

"(3) Taxes (including documentary stamp taxes) on the execution, delivery, or recordation of documents within such jurisdiction.

"(4) Taxes on tangible personal property (not including cash or currency) located within such jurisdiction.

"(5) License, registration, transfer, excise, or other fees or taxes imposed on the ownership, use, or transfer of tangible personal property located within such jurisdiction.

"(c) No sale tax or use tax complementary thereto shall be imposed pursuant to this paragraph 5 upon purchases, sales, and use within the taxing jurisdiction of tangible personal property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969.

"(d) As used in this paragraph 5, the term 'State' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam."

(b) Effective on January 1, 1972, section 5219 of the Revised Statutes, as amended by subsection (a), is amended to read as follows:

"SEC. 5219. (a) Notwithstanding any other law, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision on a national bank having its principal office within such State in the same manner and to the same extent as such tax

is imposed on a bank organized and existing under the laws of such State.

"(b) Except as otherwise herein provided, the legislature of each State may impose, and may authorize any political subdivision thereof to impose, the following taxes on a national bank not having its principal office located within the jurisdiction of such State, if such taxes are imposed generally throughout such jurisdiction on a nondiscriminatory basis:

"(1) Sales taxes and use taxes complementary thereto upon purchases, sales, and use within such jurisdiction.

"(2) Taxes on real property or on the occupancy of real property located within such jurisdiction.

"(3) Taxes (including documentary stamp taxes) on the execution, delivery, or recordation of documents within such jurisdiction.

"(4) Taxes on tangible personal property (not including cash or currency) located within such jurisdiction.

"(5) License, registration, transfer, exercise, or other fees or taxes imposed on the ownership, use, or transfer of tangible personal property located within such jurisdiction.

"(c) No sales tax or use tax complementary thereto shall be imposed pursuant to this section upon purchases, sales, and use within the taxing jurisdiction of tangible personal property which is the subject matter of a written contract of purchase entered into by a national bank prior to September 1, 1969.

"(d) The legislature of each State may impose, and may authorize any political subdivision thereof to impose, taxes on the income of any individual derived from dividends paid on the shares of any national bank, if such taxes are imposed on a nondiscriminatory basis.

"(e) As used in this section, the term 'State' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam."

SAVINGS PROVISION

SEC. 2. Notwithstanding any other provision of law, no tax may be imposed on any bank by or under the authority of any State legislation in effect prior to the date of enactment of this Act if such bank is not required to pay the tax prior to such date, unless the imposition of such tax on such bank is authorized by affirmative action of the State legislature after such date.

STUDY BY BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

SEC. 3. (a) The Board of Governors of the Federal Reserve System (hereinafter referred to as the "Board") shall make a study to determine the probable effects on the banking systems of the Nation if banks were subject to (1) taxes on intangible personal property imposed by any State or other jurisdiction within which their principal offices are located, and (2) taxes (other than those enumerated in paragraph 5(b) of section 5219 of the Revised Statutes, as amended by this Act) imposed on a nondiscriminatory basis by any State, or political subdivision thereof, without regard to whether the principal offices of such banks were located within the taxing jurisdiction. In conducting such study the Board shall consult with the Secretary of the Treasury and appropriate State banking and taxing authorities.

(b) The Board shall make a report of the results of its study to the Congress not later than December 31, 1970. Such report shall include the Board's recommendations with respect to the desirability of permitting banks to be subject to the taxes referred to in subsection (a).

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAVEL in the chair). Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, the bill as presently before the Senate was offered in the Senate originally by the distinguished Senator from Florida, who has had a very deep interest in this matter. Also, a somewhat similar House bill was offered.

The purpose of the bill is simple, although the implications of the bill are very complex.

The purpose of the bill is to try to give the States an opportunity to tax the banks in those States on an equitable basis.

This is hard to do because the present law, section 5219 of the Revised Statutes, currently provides a list of taxes which can be imposed on national banks by States or their political subdivisions. The list is explicit and contains a number of detailed and cumbersome exceptions. The courts have repeatedly ruled that the taxes specified in section 5219 are exclusive; that is, they are the only taxes that can be imposed by a State government on a national bank.

This method of restricting State taxation of national banks had its inception approximately 100 years ago.

Mr. SPARKMAN. Mr. President, will the Senator yield?

Mr. PROXMIRE. I yield to the Senator from Alabama, the chairman of the committee.

UNANIMOUS-CONSENT AGREEMENT

Mr. SPARKMAN. Mr. President, I make a unanimous-consent request to the effect that the time on the bill be limited to not to exceed 1 hour, to be equally divided between the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Utah (Mr. BENNETT).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, as I was saying, the purpose of this bill is to give the States and their subdivisions the opportunity to tax banks within their jurisdiction in the same way that they tax other businesses, and eliminate a discrimination which goes back 100 years. That discrimination was designed to restrict the power of State governments from levying taxes on national banks in response to taxes levied by the Federal Government on State banks.

That was, of course, at a time when some of the States were moving into Federal areas, such as coining money, and there was a very complex situation, which resulted in this kind of protection.

The States have utilized a number of methods to deal with the problems arising from the fact that national banks are not liable for the same State taxes as State banks.

Some States have exempted State banks from liability for any States taxes which national banks are required to pay. There, the State may or may not have attempted to achieve equality between banks and other businesses by taxing banks at a higher rate on the allowable taxes than other businesses pay. This type of device is at best uncertain.

Regardless of the method employed by the particular State in an attempt to achieve equality, there is always a question of whether it has actually been achieved, be it equality between State and National banks, or equality between banks and other businesses.

There may have at one time been justification for giving national banks privileges and immunities which were denied State banks, under the theory that national banks are peculiarly an instrumentality of the Federal Government, and, as such, hold a unique and distinct position from that of other institutions. Without specifically addressing the question of whether national banks remain, in substance, such a Federal instrumentality, the committee is agreed that there is no longer any justification for Congress continuing to grant national banks immunities from State taxation which are not afforded State banks.

STATE AUTONOMY IN TAXATION

Incidentally, the committee is in full according with the principle that every State government should be allowed the greatest possible degree of autonomy with regard to the formulation of its tax structure. Accordingly, the committee agrees in principle with the objective of the bill passed by the House of Representatives.

However, certain problems were pointed out in connection with the approach taken in the bill passed by the House of Representatives. The committee believes that the existence of some of those problems justified correcting amendments.

I shall mention just briefly two particular problems.

INTANGIBLE PERSONAL PROPERTY TAXES

The committee believes that the greatest concern about possible increased intangible personal property taxation of banks stems from uncertainty about the magnitude of the impact of the sudden imposition of additional such taxes on the banking systems. Accordingly, the committee believes it wise to prohibit initially the imposition of intangible personal property taxes other than those which were authorized in section 5219 and to require the Federal Reserve Board, in cooperation with the Department of the Treasury and appropriate State banking and taxing authorities, to conduct a study of intangible personal property taxation and its impact on the banking systems. The report would be made on or before December 31, 1970, a little over a year from now, and would not be effective until 1 year later than that, that is, January 1, 1972. The prohibition against additional intangible personal property taxes would, under the provisions of the bill, be automatically repealed unless Congress acts to the contrary during the intervening time.

The committee wants it clearly understood that the prohibition against intangible personal property taxes contained in the proposed new paragraph 5(b) is not a prohibition against the

continued imposition of any tax under the authority of section 5219 of the Revised Statutes as it now reads. The prohibition—which would be repealed on January 1, 1972—is against the imposition of any new intangible personal property tax which is not authorized under section 5219 as it is immediately amended by this act.

There is just one other section I wish to discuss.

THE MECHANICS OF THE CHANGE IN LAW

Strenuous objection was made to an amendment to the existing law which would immediately wipe out the language of the existing section 5219 and replace it with the broader language giving effect to the intended substantive amendment. Reference was made to those States, such as Missouri, in which the State legislation concerning taxation of banks has made specific reference to section 5219 of the Revised Statutes. The concern is that by repealing section 5219, the taxing authority under existing State legislation might in some way be impaired.

In order to alleviate this possible problem, the committee agreed to leave intact the existing language of section 5219. A new subsection is added to section 5219 which deals with the expanded taxing authority being immediately granted. This was done for the purpose of allowing the States to take immediately the necessary action to impose the additional allowed taxes if they see fit. At the same time, those States which might be adversely affected by the immediate repeal of the existing language will be given 2 years in which to effect the necessary State statutory changes.

The bill then provides that, as of January 1, 1972, section 5219 is amended to do away with the detailed and rather cumbersome language of the current section 5219 and replace it with a simple broad statement of law. The major effect of the January 1, 1972, amendment is to remove specifically the prohibition against intangible personal property taxes which might be levied by the States on national banks whose principal offices are located within that State.

Mr. President, I reserve the remainder of my time.

Mr. BENNETT. Mr. President, as a member of the committee, I supported the bill. I voted for its reference to the Senate. I certainly agree with the purpose and the reason for the pending legislation. However, I have had called to my attention since the bill was reported the fact that there is one provision of the bill which may create very serious problems.

I am sure that this contingency was not thought of by either the proponents of the bill or the members of the committee.

I realize that there is nothing like this section in the House bill, so that the matter will be in conference. I do not expect to ask the Senate to vote on the measure today for that reason. But I would like to make the record so that before the measure goes to conference the members of the committee and the Senate will realize the problem.

Beginning on line 23 of page 5 and continuing through line 4 of page 6 is what is headed the Savings Provision which reads as follows:

> Notwithstanding any other provision of law, no tax may be imposed on any bank by or under the authority of any State legislation in effect prior to the date of enactment of this Act if such bank is not required to pay the tax prior to such date, unless the imposition of such tax on such bank is authorized by affirmative action of the State legislature after such date.

To try to say that in nontechnical language, there is apparently at least one State in which the existing taxes on the State banks are considered to be onerous, and the national banks do not want to have that pattern of existing taxes automatically applied to them when the bill passes. They therefore say that even though these taxes do exist now and are applied to State banks and even though the pending bill gives the power to apply them to national banks, the national banks should not be included without a specific act by the various State legislatures. This sounds reasonable, and the committee approved it, I suppose, unanimously.

It has been pointed out, however, since that time, that this measure would automatically force every State legislature to meet to consider the general subject of the taxation of banks. And since the States are having trouble raising revenue, instead of accomplishing what we had hoped to accomplish—which was to bring national banks under existing State laws—we may open it up and force the States to open up the matter so that both the national and State banks will be called upon to face a more onerous tax burden than now exists.

I think that by calling this to the attention of the Senate in this brief discussion. I have probably laid the basis for serious consideration of the matter in conference. Therefore, I will not press for a vote on the matter.

Mr. PROXMIRE. Mr. President, I very much appreciate this. We had a chance to discuss the matter just before the bill was called up for consideration on the floor. I think that there is great merit in the objection of the Senator to that particular section. However, this was a section that was put in after considerable discussion by the committee.

I most appreciate the suggestion that we consider it seriously in conference. I believe that the Senator has raised an objection that would indicate to me that we certainly should consider whether it should remain in the law after we act on the measure.

Mr. BENNETT. Mr. President, the Senator from Wisconsin will agree with the Senator from Utah that this particular aspect of the language did not occur to any of us during the discussion in the committee. This is a new approach to the problem.

Mr. PROXMIRE. Mr. President, the Senator is absolutely correct. This is a new approach which, I think, was not considered, but which might well have persuaded us to knock it out. However, I prefer, if the Senate agrees, to take this to conference because we have not had a chance to discuss it completely.

Mr. BENNETT. The Senator is correct. I agree with him.

Mr. President, I am about ready to yield back the remainder of my time.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. PROXMIRE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 10 minutes remaining.

Mr. PROXMIRE. Mr. President, I yield to the Senator from Florida all my time if he wishes.

The PRESIDING OFFICER. The Senator from Florida is recognized for 10 minutes.

Mr. HOLLAND. Mr. President, first of all, I express my appreciation to the chairman of the subcommittee which handled the bill and to the distinguished ranking minority member of the full committee and to the Senator from Alabama (Mr. SPARKMAN), the chairman of the full committee, not only for prompt hearings of the measure but also for the agreement to take up the measure so that we can get it, we hope, to conference.

Mr. President, the act permitting States and local units of government to tax national banking units was passed a long time ago. I have been told that it was about 100 years ago. However, I could not support that statement of my own knowledge.

Mr. PROXMIRE. Mr. President, the Senator is almost precisely correct. It was in 1863.

Mr. HOLLAND. It was more than 100 years ago. I thank the Senator.

It is my understanding that the last revision was made in about 1926 and that there has been no serious consideration in this field until the Supreme Court passed recently upon a case in which it held—and I suspect properly held—that the only taxes which could be levied on national banks by States or local units of government were those specifically permitted by the existing Federal law.

Under that decision, certain taxes levied by the State which I represent in part, the State of Florida, were held to be illegal when levied against national banking institutions, in spite of the fact that they are levied against State banks and also against the savings and loan institutions.

Since the State of Florida has legislation which, in effect, exempts State banks from any taxes levied against national banks which national banks do not have to pay, this meant that the State banks also were exempted from these particular taxes not specifically permitted by Federal law. And since my State has a similar provision affecting savings and loan institutions, the same result obtained there.

So, the total loss of taxes in the State of Florida, as I am told by the comptroller of our State, who has charge of the collection of State taxes, is somewhere between $25 million and $27 million a year. That is a rather serious deficit in the tax potentiality.

The comptroller, as well as the banking organizations and the building and loan organizations of my State, requested that I introduce legislation on this subject. The purpose of the legislation

was solely to exempt the banking laws of the States—my State and all others—from the prohibition expressed in the Supreme Court decision which I mentioned and to permit the States and local institutions to levy the taxes which now prevail under State laws, not only in my State but in other States as well.

The fact is that the Senator from Florida introduced a bill—and he has no pride of authorship in the bill—known as S. 2906. It was drafted by the attorneys for the State comptroller of Florida. That bill went to the able committee, to which the measure passed by the other body, H.R. 7491, generally referred to as the Patman bill, has been referred. Other measures were suggested, including one by the American Bankers Association. The matter came before this learned committee and after the taking of testimony which appears in the printed record, the hearing having been held on September 24 of this year, the committee found much to be desired when they considered my bill, and I believe they felt that the House bill, the so-called Patman bill, had gone too far. I certainly am of that opinion. So the committee, with the assistance of its able staff and members of the committee who themselves have experience in this field, reported what amounts to a committee substitute for the House bill.

I want to make it perfectly plain, Mr. President—I have already stated this to Senators on both sides of the aisle who are concerned with this matter—that I think this bill is going to have to be rewritten in conference. What I am anxious to do is to get the bill which bears a House number passed by the Senate and in conference. I am perfectly willing to leave it to the joint judgment of the able senior members of the Senate committee and similar members of the House committee who will in conference take up the matter in the light of all the facts now available.

I am simply hoping that the matter can be decided before we go home at Christmas, and preferably within the next few days, because my own State has to act before the calendar year is out—and I am told that some other States are in the same situation—if they hope to collect taxes for this year.

So I am going to ask for a very unusual procedure to be followed. In order that the conference may have before it the entire matter, I wonder if Senators on both sides would be agreeable to including in the RECORD the report of the committee and the individual views of the Senator from Texas (Mr. TOWER). While this is not generally permissible, this is a short report and it shows the conflicting views that were in the committee. My understanding is that at that time the Senator from Texas was the only one who objected to certain provisions in the bill.

Mr. PROXMIRE. I think that is an excellent suggestion.

At the request of the Senator from Florida I ask unanimous consent to have an excerpt from the report printed in the RECORD.

There being no objection, the excerpt from the report (91–530) was ordered to be printed in the RECORD, as follows:

STATE TAXATION OF NATIONAL BANKS

HISTORY OF THE LEGISLATION

The bill, H.R. 7491, was introduced by Mr. Patman on February 24, 1969. The bill, with an amendment, was favorably reported by the House Banking and Currency Committee on June 9, 1969. The House passed the bill on July 17, 1969. Hearings were held before the Senate Banking and Currency Committee on H.R. 7491 and other bills and proposals on September 24, 1969. On November 4, 1969, the committee ordered that the bill, with amendment, be favorably reported to the Senate.

BACKGROUND OF THE LEGISLATION

Section 5219 of the Revised Statutes (12 USC 548) currently provides a list of taxes which can be imposed on national banks by States or their political subdivisions. The list is explicit and contains a number of detailed and cumbersome exceptions. The courts have repeatedly ruled that the taxes specified in section 5219 are exclusive; they are the only taxes that can be imposed by a State government on a national bank.

This method of restricting State taxation of national banks had its inception approximately 100 years ago. It was designed to restrict the power of State governments from levying taxes on national banks in response to taxes levied by the Federal Government on State banks.

The States have utilized a number of methods to deal with the problems arising from the fact that national banks are not liable for the same State taxes as State banks.

Some States have exempted State banks from liability for any States taxes which national banks are required to pay. There, the State may or may not have attempted to achieve equality between banks and other businesses by taxing banks at a higher rate on the allowable taxes than other businesses pay. This type of device is at best uncertain.

Regardless of the method employed by the particular State in an attempt to achieve equality, there is always a question of whether it has actually been achieved, be it equality between State and National banks, or equality between banks and other businesses.

There may have at one time been justification for giving national banks privileges and immunities which were denied State banks, under the theory that national banks are peculiarly an instrumentality of the Federal Government, and, as such, hold a unique and distinct position from that of other institutions. Without specifically addressing the question of whether national banks remain, in substance, such a Federal instrumentality, the committee is agreed that there is no longer any justification for Congress continuing to grant national banks immunities from State taxation which are not afforded State banks.

STATE AUTONOMY IN TAXATION

The committee is in full accord with the principle that every State government should be allowed the greatest possible degree of autonomy with regard to the formulation of its tax structure. Accordingly, the committee agrees in principle with the objective of the bill passed by the House of Representatives.

However, certain problems were pointed out in connection with the approach taken in the bill passed by the House of Representatives. The committee believes that the existence of some of those problems justified correcting amendments. Those amendments and the problems they deal with are discussed below.

INTANGIBLE PERSONAL PROPERTY TAXES

In the statement submitted to the committee by the Hon. William McC. Martin, Chairman of the Federal Reserve Board, it is stated that there is merit in excluding taxes on intangible personal property. By way of justification, he stated that such a tax "* * * hits hardest those financial institutions whose assets consist almost wholly of intangibles; so a tax that appeared to be nondiscriminatory could operate unfairly in practice if applied to banks." The committee is aware of the argument that the same statement would be equally true if applied to tangible property taxes and their impact on financial institutions, which have little tangible property, compared to their impact on manufacturing corporations, which have almost all tangible property.

The committee also notes that some of the taxes on national banks now being allowed under the present section 5219 are considered forms of intangible personal property taxes. On the other hand, the taxes listed in the new section 5(b), relating to interstate taxation, are not considered to be taxes on intangible personal property as that term is used in the new section 5(a), and they could be imposed on national banks by the States during the period up to January 1, 1972, as well as after that date.

The committee believes that the greatest concern about possible increased intangible personal property taxation of banks stems from uncertainty about the magnitude of the impact of the sudden imposition of additional such taxes on the banking systems. Accordingly, the committee believes it wise to prohibit initially the imposition of intangible personal property taxes other than those which were authorized in section 5219 and to require the Federal Reserve Board, in cooperation with the Department of the Treasury and appropriate State banking and taxing authorities, to conduct a study of intangible personal property taxation and its impact on the banking systems. The report would be made on or before December 31, 1970. Effective 1 year later (i.e., January 1, 1972), the prohibition against additional intangible personal property taxes would, under the provisions of the bill, be automatically repealed unless Congress acts to the contrary during the intervening time.

The committee wants it clearly understood that the prohibition against intangible personal property taxes contained in the proposed new paragraph 5(b) is not a prohibition against the continued imposition of any tax under the authority of section 5219 of the Revised Statutes as it now reads. The prohibition (which would be repealed on January 1, 1972) is against the imposition of any *new* intangible personal property tax which is not authorized under section 5219 as it is immediately amended by this act.

INTERSTATE TAXATION

Very serious concern was voiced in regard to the advisability of granting State governments the authority to levy taxes on national banks whose principal offices are located outside the State. In a letter to the committee, Paul W. Eggers, General Counsel of Treasury, stated:

"The question of taxation of foreign corporations, including banks, is interwoven with other complex issues, such as venue for suit, and necessity for compliance with "doing business" statutes. We recommend, therefore, that the question of taxation of national banks by States other than the home State, be considered and treated separately."

On this problem, Chairman Martin stated that the Federal Reserve Board was inclined to agree with the Department of the Treasury. He said:

"The issue of multistate taxation of corporations is complex, and one on which we have limited knowledge. It is not involved in the two Supreme Court decisions that prompted introduction of the various bills before you. We believe equal treatment in the home State is clearly needed now; determination of whether changes should be made in other States can await further study."

These views were supported by many other concerned parties and organizations.

Under the circumstances, the committee believes it wise to specify the types of taxes

which can be levied on national banks located outside the taxing State while continuing to prohibit all other forms of such taxation, at least until the Federal Reserve Board completes a study of the problem and Congress has had time to review it along with all the facts.

The committee did, however, specify certain taxes that could be levied on national banks located outside the taxing State. The named taxes are those taxes which virtually everyone concerned agreed could be properly imposed on these banks. The impact on the banking systems of the imposition of these taxes will not be great. Their imposition will not confront the banking systems with a quantitative and qualitative unknown, which may or may not be the case with respect to other forms of interstate taxation.

THE MECHANICS OF THE CHANGE IN LAW

Strenuous objection was made to an amendment to the existing law which would immediately wipe out the language of the existing section 5219 and replace it with the broader language giving effect to the intended substantive amendment. Reference was made to those States, such as Missouri, in which the State legislation concerning taxation of banks has made specific reference to section 5219 of the Revised Statutes. The concern is that by repealing section 5219, the taxing authority under existing State legislation might in some way be impaired.

In order to alleviate this possible problem, the committee agreed to leave intact the existing language of section 5219. A new subsection is added to section 5219 which deals with the expanded taxing authority immediately granted. This was done for the purpose of allowing the States to take immediately the necessary action to impose the additional allowed taxes if they saw fit. At the same time, those States which might be adversely affected by the immediate repeal of the existing language will be given 2 years in which to effect the necessary State statutory changes.

The bill then provides that, as of January 1, 1972, section 5219 is amended to do away with the detailed and rather cumbersome language of the current section 5219 and replace it with a simple broad statement of law. The major effect of the January 1, 1972, amendment is to remove specifically the prohibition against intangible personal property taxes which might be levied by the States on national banks whose principal offices are located within that State.

SECTION-BY-SECTION DISCUSSION

The proposed new paragraph 5(a) to section 5219 would provide that, in addition to the other methods of taxation authorized by the existing section 5219, and subject to the limitation and restrictions therein, a State or political subdivision may impose any tax, other than a tax on intangible personal property, on a national bank having its principal office in the State, if that tax is imposed generally on a nondiscriminatory basis, and the tax is imposed in the same manner and to the same extent on State banks. The effect of this subsection is to remove the prohibition against States freely taxing national banks located within their boundaries to the same extent and in the same manner that they now have the right to tax State banks. The only exception to this other than those specified in the existing statute is the continued prohibition against the imposition of intangible personal property taxes. At a later point, the bill provides for an amendment, effective January 1, 1972, which would remove that prohibition. In the interim period, the Federal Reserve Board will conduct a study of the problem of intangible personal property taxation and will make its findings and recommendations known to Congress.

The proposed new paragraph 5(b) deals with the imposition of taxes on national banks which are located outside the State. As noted earlier, serious objections were raised in regard to the possibility of allowing such taxation without additional study. Accordingly, the committee agreed to continue the prohibition against interstate taxation with the exception of those taxes which virtually everyone concerned agreed should be paid by national banks, even though they may be located outside the taxing State. Accordingly, section 5(b) specifies the taxes which are allowable. These taxes are sales and use taxes, real property taxes, documentary taxes, tangible personal property taxes, and the various license, registration, transfer, excise taxes, and other fees levied in connection with tangible personal property. Other forms of unspecified interstate taxation would continue to be prohibited until Congress acts further.

The proposed new paragraph 5(c) prohibits the imposition, under paragraph 5, of sales and use taxes on tangible personal property which is the subject matter of written purchase contracts entered into prior to September 1, 1969.

The proposed new paragraph 5(d) defines the term "State" to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

Section 1(b) of the bill provides that as of January 1, 1972, section 5219 of the Revised Statutes, as previously amended, is amended to remove the detailed specifications of allowable taxes (contained in the law prior to the enactment of this act) which was temporarily retained for a period of 2 years (to allow States to conform their statutes to the new law), and to substitute it with a broad statement of law:

"(a) Notwithstanding any other law, a State or political subdivision thereof may impose any tax which is imposed generally on a nondiscriminatory basis throughout the jurisdiction of such State or political subdivision on a national bank having its principal office within such State in the same manner and to the same extent as such tax is imposed on a bank organized and existing under the laws of such State."

As noted earlier in this report, the major substantive change in this amendment would be to remove the prohibition against the intrastate imposition of intangble personal property taxes.

Section 2 of the bill provides that no tax money may be imposed on any bank under the authority of any State legislation in effect prior to the date of enactment of this act if such bank is not required to pay the tax prior to such date, unless the imposition of that tax is affirmatively authorized by action of the State legislature after the enactment date.

The committee realizes that for many years the tax structure within the States have been drawn in recognition of the different positions of State and National banks with respect to liability for State taxes. In effect, the States have adopted many different formulas in an attempt to equalize the total tax burden between State and National banks. If by congressional action banks were automatically subject to taxes which they had not been previously paying, in addition to the taxes which they are now paying, the effect may be to destroy the degree of equality that the State legislature, by conscious effort, attempted to achieve. Accordingly, the committee believes it wise to require positive State legislative action as a prerequisite to the imposition on banks of the additional taxes authorized by the bill.

Section 3 of the bill requires the Federal Reserve Board to study the probable effects on the banking systems of the imposition on banks of intangible personal property taxes and those taxes imposed by States on banks whose principal offices are located outside their boundaries (except such taxes as are specifically allowed by sec. 5219, as amended). The study would be conducted in consultation with the Secretary of the Treasury and appropriate State banking and taxing authorities. A report of the results of the study together with recommendations must be made to Congress not later than December 31, 1970.

CORDON RULE

In the opinion of the committee it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

INDIVIDUAL VIEWS OF MR. TOWER

While agreeing with the motives for this bill, namely, the extension of the State taxation base in the banking industry and at the same time encouraging greater equality of treatment taxwise as between national banks, State banks, and other financial institutions I must take issue with the methods by which the committee's bill proposes to accomplish these purposes.

The specific purpose of both the House bill and the Senate version here under consideration is to provide authorization for the States (and local governments) to levy modern types of taxes on national banks, which were not in common use and not allowed for when the present statute (sec. 5219) was last revised in 1926. There are three basic methods under consideration to accomplish this purpose, the first being the House bill, H.R. 7491, the second being Senator Holland's bill, S. 2906, which I support, and the third being the present committee bill.

These three approaches to the problem of changing the existing statute to allow modern taxes to be imposed are explained and compared below; my conclusion in studying the problem closely is that Senator Holland's bill is considerably simpler and less costly for the States to put into effect than either of the others and will not disrupt the existing bank taxation structure upon which States and localities currently depend heavily.

1. H.R. 7491: In one immense, immediate move this bill would treat national banks as State banks for purposes of State taxation, which would have the substantial disadvantages of—

(a) Destroying State taxation statutes which refer to the Federal statute (Sec. 5219) for authorization.

(b) In States where the taxation statutes for national banks would survive H.R. 7491, the national banks (and State banks, where the State treats them equally by its own statute) would become subject to taxation as normal corporations, in addition to the special tax which was imposed on them by authority of section 5219 and which would still be in effect. Since States and localities currently draw substantial revenue from the tax they impose on national banks by virtue of section 5219, they will be unlikely to move quickly to abolish it, and the result will likely be for some time a heavy extra layer of tax on the banks, in addition to the normal business taxes they would be likely to encounter upon the enactment of H.R. 7491 (e.g., double taxation of net worth).

(c) Require State legislatures to reconsider and entirely revamp their bank taxation structures, surely a time-consuming and expensive process.

2. S. 2906 (Senator Holland): In recognition of these principal disadvantages (and others) connected with the House bill, Senator Holland introduced a much more feasible bill which would take into account the existing complex State tax structures based on section 5219 and would allow them to continue such structures, with the specific addition of the newer taxes desired by the States, namely; (1) Sales taxes (use taxes), (2) tangible personal property taxes (not in-

cluding cash or currency), (3) document taxes, (4) motor vehicles taxes and fees.

(a) This approach prevents disruption in the State tax system, and simply allows the States to add to whatever tax they desire to impose under section 5219 (which section would remain intact and unchanged) any (or all) of the newer types of taxes listed, and thereby draw in more tax revenue at the same time they are equalizing the tax status of banks and other financial institutions.

(b) This approach prevents national banks (and in many States the State banks as well) from being subject to double taxation since these newer taxes do not duplicate the existing section 5219 taxes, with the result that the banks will become taxed effectively as normal business corporations.

(c) One addition should be made to the Holland bill, to cover the situations where States have already raised bank tax rates (imposed under sec. 5219 authority) to bring banks into effective tax parity with other businesses; this provision should specify that no new tax be imposed by a State or its localities which imposes in any other form an increased rate of tax, in lieu of such new tax. The States affected could normalize their raised section 5219 tax rates and impose the newer taxes if they so desired.

3. Senate committee amendment (in the nature of substitute) to H.R. 7491: The Senate committee, also recognizing the defects in the House bill, but rejecting Senator Holland's bill, derived a complex and lengthy substitute bill which creates other problems as serious as the ones it tried to avoid in the House version. It provides for the addition to the section 5419 taxes of "any tax (other than a tax on intangible personal property)" applicable to State banks if a State legislature affirmatively imposes such a tax after the date of enactment of such enabling legislation. This would apply to in-State national banks only; however, a list similar to Senator Holland's is set out as permitted in regard to out-of-State national banks.

(*a*) Again, without a specification of allowable taxes (for in-State banks), as in Senator Holland's bill, the national banks (and many State banks) could incur double taxation due to duplicated taxes that the new provision might engender.

But the present committee bill goes beyond even this confusing situation; it would also set up a replacement statute in 1972 which would eliminate the four categories of section 5219 permitted taxes, and allow "any tax" (including intangible personal property taxes) applicable to State banks to be imposed by affirmative action of the State. Again, this would apply only to in-State banks; out-of-State banks would be taxed under the same terms as the 1970 statute permitted.

(*b*) The 1972 version will accomplish what the present H.R. 7491 version would do now; namely, create confusion and disruption in the existing complexities of taxation in 50 States.

In comparing these three bills, note that Senator Holland's bill would make these new sources of State revenue available as soon after enactment as State legislatures may desire to utilize themes, and does not disrupt existing tax schemes. It also prevents double taxation of the National and affected State banks. It serves the essential purpose of all of the bills, that is, to open up the national banks to equitable and more full taxation, and satisfies the expressed concerns of both the State taxing authorities and of the American Banking Association.

If Senator Holland's bill should be bypassed in the Senate in favor of the committee version, there should be at least these several amendments taken into consideration:

(1) Eliminate the two-step process by deleting the 1972 provision which erases the statutory structure on which bank taxation in the States has been and will continue to be based. Instead try operating on the 1970 version, which retains the existing tax structure, until such time as the Federal Reserve Board and the Treasury can complete a full study of all of the important ratifications of tax structure changes implicit in the 1972 version and advise Congress as to their desirability.

(2) Broaden the proposed Federal Reserve Board-Treasury Department study of interstate taxation and intangible personal property taxation to include all relevant matters concerning future revision of the statute concerned in these bills, so that if any further statutory action is indicated, it will be based on thorough study and consideration of the consequences to the States and the banks, rather than on rather hazardous guessing, as the committee's proposal does in its present form.

JOHN G. TOWER.

Mr. HOLLAND. I thank the Senator.

My purpose is to have the RECORD disclose just where we are, because bankers all over the country, citizens all over the country, and particularly tax officials all over the country are going to be very interested in this matter and will want to know what is before the conference. Of course, they are going to be very eager to have prompt action by the conferees and also to know what that action will be.

So far as the Senator from Florida is concerned, he is inclined to agree with certain objections made by the Senator from Texas, and while he did not know of the point raised by the distinguished Senator from Utah, it sounds like something which should be gone into in conference. The Senator from Florida wants to make it a matter of record that he will be perfectly satisfied with this matter being considered by the senior members of the two committees of the two Houses in conference and, after conference study, that they will most effectively deal with this serious problem.

Mr. PROXMIRE. May I say to the Senator from Florida that I want to thank him very much for the initiative he has taken. He is not only helping the State of Florida but all the other States as well. We all have similar problems. This will enormously help the State governments. We all have the same objectives. We would like the maximum flexibility for the States in the matter of taxes, provided it is done in a fair, equitable, and nondiscriminatory way. That is what we will seek to reach in conference.

Mr. HOLLAND. I thank the Senator. I certainly could not ask for anything different. That is what I am asking for in this bill.

I am quite content to leave the case of the States and the local communities of government in the hands of the conferees who will be appointed by the two bodies. I recognize the fact that this is a complicated matter and that it must be considered in a rather emergency fashion because of the urgency and the necessity of helping some of the States, including my own, to levy and collect some taxes this year which they cannot do under the existing decision of the Supreme Court without additional legislation.

I thank my friends for bringing up the measure. I will be quite content to have the bill passed as reported by the committee and go to conference in that shape; not that I agree to everything that is in it, but because I think the conference will bring this bill to the point that heals the difficulties that exist and will allow the States to collect their taxes.

Mr. SPARKMAN. Mr. President, will the Senator from Utah yield?

Mr. BENNETT. I yield to the Senator from Alabama such time as he may need.

Mr. SPARKMAN. Mr. President, I wish to express gratitude to the majority leader for letting us bring up this bill at this time We did it under a time limitation agreement. We did it with some difficulty, but I believe with an understanding that was worked out. I talked with the Senator from Florida, the Senator from Wisconsin, the Senator from Utah, the Senator from Texas (Mr. TOWER), and all those who will be on the conference committee, save the Senator from Florida.

I think we have a very clear understanding. The Senator from Texas hoped that he could be here when the bill came up, because he did have a real objection.

As stated in the report, he wanted to offer an amendment, but he said, "Go ahead and bring the bill up."

The Senator from Utah had raised some question on some language in the bill, and I made the proposal that we go ahead and pass the bill as the Senate reported it, because everything will be in conference. None of the language that the Senator from Utah and the Senator from Texas find objectionable is in the House bill. Therefore, it will be in conference.

I think it only fair to put in the RECORD and to give notice that when we get to conference, we will feel quite free in working on this language as well as any other language, in trying to arrive at a satisfactory solution.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. SPARKMAN. I yield.

Mr. HOLLAND. I thank the Senator for his clear and generous statement.

I am quite willing to leave my case in the sense of justice and also the sense of mercy that I am sure will prevail in the conference, because the States and the local units of government are adversely affected.

I must say for the banks in my State, the national banks in particular—I have heard from many of them—want this measure to be passed and feel that, as part of the community, they should pay the same taxes as anybody else. I have found a most wholesome and generous approach to this problem on the part of the national banks, the savings and loan institutions, and the State banks. That is true for my State, and, so far as I know, because I have had some communications from other States, it is true generally.

I thank the Senator for yielding.

Mr. SPARKMAN. I would suggest to the Senator that he not rely too heavily upon mercy, but I hope he will continue his trust in our desire to do the right, equitable, and fair thing. I can assure him that he can rely on the conferees on the Senate side to do that.

I do want to say this: The Senator said something about hoping that the conference could be held within the next few days. It will not be feasible to hold it until after the first of December. However, I certainly will do my best to get it to conference as soon as we can.

Mr. HOLLAND. Mr. President, will the Senator yield briefly?

Mr. SPARKMAN. I yield.

Mr. HOLLAND. I understand that the Governor of my State has called a special session of our legislature to meet in December. I am not sure of the date but it seems to me it is December 10.

Mr. SPARKMAN. We should be finished by then.

Mr. HOLLAND. If we can get it disposed of prior to that special session it would give my State a chance to act and, as the Senator from Wisconsin said, other States may be in an equally difficult situation, but I cannot speak for them.

Mr. SPARKMAN. I think the Senator can rely on that and I am confident we will come back with a bill.

Mr. GURNEY. Mr. President, I support this bill, H.R. 7491, the purpose of which is to equalize State taxation of banking institutions, that is, to put on an equal basis within a particular State, the taxation of national banks and State banks.

An intolerable situation had arisen in the State of Florida out of the case of the First National Bank of Homestead and Okaloosa National Bank at Niceville against Dickinson. This case, decided by a three-judge U.S. District Court for the Northern District of Florida, enjoined the comptroller of the State of Florida, the Florida Revenue Commission, and the director of revenue from levying certain sales and use taxes, intangible personal property taxes and documentary stamp taxes on the said national banks. The case was affirmed by the U.S. Supreme Court in a memorandum decision on July 20, 1969.

This case meant the loss of many millions in dollars in tax revenue to the State of Florida, which was serious enough in itself. But there was an even greater injustice caused by the decision, in that it placed the two banking systems in the State of Florida, that is the State banks and the national banks in entirely different economic categories. The State banks were subject to various State taxes, while the national banks, because of this decision, escaped the same taxes scot free. Obviously, this created an intolerable situation.

This bill corrects that injustice and disparity and I fully support the bill.

The passage of this bill will be received with considerable and grateful enthusiasm by banking interests in Florida, as well as other interested citizens, who are acquainted with this problem.

While I support H.R. 7491, because the legislation is urgently needed and will accomplish the desired result of equalizing taxes as far as State and national banks are concerned, I must say that S. 2906, which was introduced by my colleague, the senior Senator from Florida, and cosponsored by me and others, would have been a much better bill, in my view. Senator HOLLAND'S bill would have equalized the tax situation as far as the State and national banking institutions are concerned, but it would have also permitted the various existing complex State tax structures to have continued, whereas the bill before us, H.R. 7491, complicates and confuses the situation.

Senator HOLLAND'S bill was simpler, and in my view, much more reasonable and logical.

However, as I say, I do support the present bill before us as urgently needed to cope with the situation facing the State of Florida and others, and that is to correct the inequitable State taxation of State and national banking institutions and put them on a par.

The PRESIDING OFFICER (Mr. SCHWEIKER in the chair). The question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 7491) was read the third time and passed.

Mr. HOLLAND. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS of New Jersey, Mr. BENNETT, and Mr. TOWER conferees on the part of the Senate.

ASSISTANCE TO MEDICAL LIBRARIES

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11702.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 11702) to amend the Public Health Service Act to improve and extend the provisions relating to assistance to medical libraries and related instrumentalities, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. MANSFIELD. I move that the Senate insist upon its amendment and agree to the request of the House for a conference, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. YARBOROUGH, Mr. WILLIAMS of New Jersey, Mr. KENNEDY, Mr. NELSON, Mr. EAGLETON, Mr. CRANSTON, Mr. HUGHES, Mr. DOMINICK, Mr. JAVITS, Mr. MURPHY, Mr. PROUTY, and Mr. SAXBE conferees on the part of the Senate.

TAX REFORM ACT OF 1969—REPORT OF A COMMITTEE—INDIVIDUAL AND SEPARATE VIEWS (S. REPT. NO. 91–552)

Mr. LONG. Mr. President, from the Committee on Finance, I report favorably, with an amendment, the bill H.R. 13270 to reform the income tax laws, and I submit a report thereon. I ask unanimous consent that the report be printed together with individual and separate views.

The PRESIDING OFFICER. The report will be received and the bill will be placed on the calendar; and, without objection, the report will be printed, as requested by the Senator from Louisiana.

Mr. LONG. Mr. President, the legislation I am reporting is the Tax Reform Act of 1969. It is a voluminous piece of legislation—probably the most massive bill that will come before the Senate in the 91st Congress. This bill represents more than 2 months of some of the most arduous work the Finance Committee has ever undertaken. It contains $7 billion of revenue raising tax reforms and it extends more than $9 billion of tax reductions spread out over the years 1971 and 1972.

Without the tremendous dedication to their work that the members of the Finance Committee demonstrated during the many long sessions we held on the bill it would not be possible for this bill to come before the Senate at this time. The Senators of the committee gave generously of themselves. They did their homework and always prepared themselves for the intricate discussions of tax loopholes and tax avoidance devices which marked most of the work on the bill. Our staffs, too, demonstrated tremendous dedication to the work of the committee. And, Senators will learn next week when we begin the debate on the bill that this is not the kind of a bill that can be acted on without the aid of an expert staff.

Mr. President, I should particularly commend the chief of staffs of the joint committee, Mr. Larry Woodworth, Mr. Harry Littell, senior counsel of the Senate's office of legislative counsel, and Mr. Tom Vail, chief counsel of the Committee on Finance, as well as their fine assistants for the many, many hours of dedicated work they devoted to this task. These people prepared all sorts of data on pamphlets for Senators day by day to take home with them at night to study for the session the next day, preparing and summarizing statements of witnesses before they appeared so that we could move more expeditiously through the hearing, more so than has been achieved by any other committee during this Congress, the previous Congress, or Congresses before that, so far as I recall.

We tried to hear all witnesses who wanted to testify but even so it was necessary to persuade at least 500 of the nearly 800 people who wanted to testify that we would accept a statement to be printed in the record, or consolidate their statements with other statements so that we could conclude the work on this bill in the time allotted to us.

For the last 3 weeks since the committee ordered the bill reported on October 31, the drafting of the technical language carrying out our many decisions—and we made more than 400 of them—has been going on in the office of the Senate legislative counsel. The drafting group was large. It consisted of our committee staff and the joint committee staff and perhaps as many as 75 experts that the Treasury Department and the Internal Revenue Service made available to us for this work. But in the final analysis the entire product of their efforts in carrying out the committee's many decisions had to be funneled through a single man—Harry B. Littell, senior tax counsel, in that office.

The Committee on Finance is, and indeed the Senate itself should be, very proud and fortunate to have a man of Harry's unquestioned ability available to help transform our decisions into precise statutory terms. The time limitation we placed upon him to draft this unusually long and detailed bill was almost impossible to meet. But by giving us his Saturdays and Sundays and by working around the clock and into the night on weekdays he has finished the technical work. I for one applaud him as a good tax lawyer, an excellent draftsman, a dedicated Senate employee, and a fine person.

Now it is up to us in the Senate to take up the committee's bill and decide whether the many tax reforms in this bill are going to be enacted. It is up to us to decide whether the massive tax cuts this bill provides—and the tax relief it brings to poverty income groups—is truly going to be the law of the land.

In preparing for the debates on the bill next week, I urge Senators to read and study the summary of the bill I sent them on Tuesday. It is an accurate and complete description of the many features of this complex bill. I am certain that Senators will profit by reading it in advance of the formal debate. It will help them understand not only what we propose by the committee bill, but also why we propose it. If Senators will view the committee's work in this perspective it will do much to expedite floor consideration of the tax reform bill.

Mr. MANSFIELD. Mr. President, I wish to commend the distinguished Senator from Louisiana who, with his committee, has done a remarkable job in reporting the bill, which will soon be the pending business before the Senate, not later than October 31, and for being able, in a circumscribed period of time, to report to the desk the bill in all its details so that we could be ready to take it up on Monday next.

I cannot speak too highly in praise of the distinguished Senator and the members of his committee on both sides of the aisle. I think they have done a magnificent job and I think what they have accomplished is something a lot of people thought they could not do in the period in which they worked.

I cannot say words high enough in praise of the Senator from Louisiana for this fine job. I am grateful that he has been able to do what he has done, and invite the attention of the Senate to the fact that it was an unusual success.

Mr. LONG. May I thank the majority leader very much for the kind remarks he has made, both about the chairman of the committee and the committee itself.

As I said in my remarks, I believe the committee put in longer hours and worked more diligently on this piece of legislation than ever before, to try to hear the points of view of all concerned about this matter—and there were many—and also to try to consolidate the statements, and get abbreviated statements, so that we could consider the points of view of all those who, for one reason or another, might feel they were adversely affected by this legislation, as well as those who felt that they were perhaps entitled to more consideration than the House or even the Senate felt it could accord them.

I regret it was not possible to hear some witnesses to the extent we would like to have done. I am particularly familiar with the effect on one witness, representing a nationwide organization, who was concerned about the fact that he was permitted only 10 minutes to testify. He certainly had a right to speak longer than that. However, there were others who shared his point of view who spoke for 2 whole days with regard to the subject that this witness was concerned about. To have done otherwise would have made it impossible to have acted on the bill this year. Therefore, we did the best we could with the time available to us.

Mr. MANSFIELD. I deeply appreciate what the Senator has done.

TAX REFORM ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 13270, the Tax Reform Act of 1969. I do this so that the bill will become the pending business on Monday next.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. H.R. 13270, an act to reform the income tax laws.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, again for the information of the Senate, first, there will be no votes this afternoon; second, there will be amendments, I am sure, offered on Monday, Tuesday, and Wednesday of next week before we go out for the Thanksgiving period.

It is possible that there will be votes on some of the amendments. Thus, once again, I emphasize this very strong possibility to the Senate, so that all Senators will be prepared and will know what the prospects are for next week.

AGNEW'S ATTACK ON RESPONSIBLE PAPERS, WRONG BUT SHREWD POLITICS

Mr. PROXMIRE. Mr. President, the Vice President of the United States last night delivered an attack on two of the giants of the press—the New York Times and the Washington Post.

The speech was inaccurate, as both the New York Times and the Washington Post pointed out with documentation today. It was wrong-headed in its assumption that deliberate bias rather than the differing judgment and shortcomings of limited human beings resulted in a different placement of the news than Mr. AGNEW would have preferred. It was ridiculous in its implications that the President and his administration have not been getting a generally favorable press.

The overwhelmingly pro-Republican editorial position of newspapers throughout the country has guaranteed that. Even in Washington—which the Vice President singled out as a horrible example—two of the newspapers support the Nixon administration on most issues. The third, the Washington Post, has supported President Nixon on some and, of course, given his views on virtually every subject strong coverage.

But in spite of all this, the Vice President deserves credit for opening up an area of power and influence in America that should be debated and discussed.

And most importantly—and here is what most evaluations of the speech have missed—the Vice President has come across an ingenious and attractive target for any shrewd politician.

The fascinating truth that Mr. AGNEW has discovered, as have a few other astute politicians, is that making a punching bag out of a really good, honest, fair, and responsible paper today is smart politics.

This is something new.

One of the first principles any successful politician learns at his mother's knee or shortly after is: "Never argue with a newspaper."

The sense behind that principle is that the newspaper can in the long run win any argument with an adversary and destroy him in the process.

Now this was true of papers—almost all papers—a generation ago. It is true of many papers today. Any Senator who tangles with a paper that has little regard for fairness, objectivity, balance, accuracy—a paper that is willing to conduct a feud—any politician tangling with that kind of paper has not got a chance.

The politician can make his argument but the paper will not print it. The paper will print the arguments of his opponents. It will carry features stressing his mistakes, his weaknesses. Every time he makes a blunder—and all of us do—it will come down hard, and constantly. In the community where that paper circulates, it will kill him.

But the good paper today, papers like the Washington Post, the New York Times, the Milwaukee Journal, the Louisville Courier, the St. Louis Post-Dispatch and others, will not do that. They cannot do this consistent with the principles they believe and practice.

A public official can take those papers on directly. He can threaten, denounce. And he can win.

Why? Because the paper will not really fight back. It will not stop printing what the public official says if it is newsworthy. It will not slant its coverage of him. It will not exaggerate every statement of the official's weaknesses. It will do its best to report the news

about its assailant fairly, accurately, objectively.

Oh, of course, back on inside page 22 on the editorial page it will rough him up. But a man as astute as Mr. AGNEW will know that the only people who consistently read the editorials are the editorial writers and the people they discuss, plus a very few more.

Studies repeatedly show the enormous readership divergence between a front-page story, reporting what an AGNEW says and inside the paper editorial reporting that what he says is not true.

The editorial does not have a chance. And the good newspaper does not, either.

This is particularly true because a public official attacking an established newspaper immediately becomes a hero. He is a giant killer. He is taking on the biggest, strongest, and one of the richest institutions around. In this fight he is the underdog, the New York Mets in the world series or Namath's Jets in the super bowl.

And a good newspaper does not have many friends. One time or another it has cut up a lot of people and struck out at a lot of popular prejudices. It has probably taken on veteran groups and the chamber of commerce, the labor unions, and the farmers.

And all the people whose groups have been opposed feel—rightly—that they are helpless. Unless they have $20 or $30 million or more to buy a newspaper, they just swallow their frustration and fume. They forget the times they agreed with the paper. They never forget when they disagreed.

So this man taking on the newspaper is their boy. He is fighting their fight.

Let me give a case in point. The mayor of Milwaukee is Henry Maier, I think he is a good mayor. He works hard. He is smart. He is a leader among the Nation's mayors.

Most remarkable—unlike other mayors who are falling out of their jobs right and left or squeezing through by paper-thin majorities or pluralities—Mayor Maier was reelected mayor of Milwaukee in 1968 with more than 80 percent of the vote, the biggest majority any Milwaukee mayor had ever won in the city's history.

He did this although he had to ask for tax increases, and not provide the services he wanted to provide, and although Milwaukee has been plagued with as tough and militant a minority movement led by Father Groppi as any city in the country.

What is Maier's secret? He took on one of the Nation's best newspapers, the Milwaukee Journal, and just for good measure he cuffs the city's other newspaper, the Milwaukee Sentinel, also a very good paper and one that does its best to play by the best newspaper rules of fairness, balance, objectivity, and no sustained feuds.

These papers have complete Milwaukee coverage. They go into virtually every home in the city. An outsider would say that the mayor does not have a chance, the papers will get him in the long run.

To the great credit of those Milwaukee papers, they have not gotten Mayor Maier and they will not. By their reasonably objective and comprehensive coverage of Maier's speeches and actions, while berating him editorially, he has the best of all possible worlds. The people of Milwaukee know and like the job he is doing. And he gets credit for having the courage to take on the newspaper Goliath and the savvy to chop them up in the process.

Mr. President, this is not just a Milwaukee story. What has happened in Milwaukee can happen nationally.

The Washington Post and the New York Times—and other responsible, conscientious papers the Vice President will very likely attack as he moves around the country—will not be intimidated.

But they will report the Agnew attack on them fully. They will continue to report what Mr. AGNEW and the rest of the Nixon administration does fully and with as much objectivity as they can get out of their reporters. They will measure inches on the front page in any campaign involving the administration to make sure the administration has a completely fair shake. The editorial page will continue to criticize Mr. AGNEW and Mr. Nixon when they disagree. But now even the criticism will have its benefits for Mr. AGNEW, as it did for Mayor Maier in Milwaukee.

So here we have a dimension of the Agnew attack that has not really been considered. How inviting this is to all of us in politics. The Vice President's attacks on the television networks is of precisely the same nature. His overwhelmingly favorable responses indicate this. And the Vice President cannot lose. In fact, he found a sure way to get on all TV networks simultaneously.

Does this mean that the price he will have to pay is to be roughed up by Chet Huntley and David Brinkley and Frank Reynolds? Of course not. Does it mean he will not be covered in the future on television by the networks? Quite the contrary. Their failure to respond would be validating the Agnew criticism.

Mr. AGNEW has found an ingenious formula for political success. It will be hard for the great newspapers of this country, great in their efforts to report fully, fairly, objectively, and with balance, to find a way to meet this without destroying their principles.

It will be a new test of popular understanding and intelligence to see how the American people respond to this new technique. I suspect there is nothing really the newspapers can do except be patient and count on the ultimate collective wisdom of the American people. If there is anything else the TV networks can do, this Senator would like to hear it.

AUTHORIZATION TO FILE REPORTS DURING ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that it be in order to file reports on bills and resolutions, together with minority and individual views, during the adjournment of the Senate until 11 a.m. on Monday, November 24, 1969.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, NOVEMBER 24, 1969, AT 11 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock Monday morning next.

The motion was agreed to; and (at 2 o'clock and 40 minutes p.m.) the Senate adjourned until Monday, November 24, 1969, at 11 o'clock a.m.

REJECTION

Executive nomination rejected by the Senate November 21, 1969:

SUPREME COURT OF THE UNITED STATES

Clement F. Haynsworth, Jr., of South Carolina to be an Associate Justice of the Supreme Court of the United States.

EXTENSIONS OF REMARKS

COINCIDENTAL RACISM

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 20, 1969

Mr. CLAY. Mr. Speaker, many black Americans and peoples of other colors throughout the world have suspicioned that racial overtones are involved in the Vietnam war. I might add that the suspicion is based more on fact than fantasy. For Americans being racist oriented as they are—have justified the intrusion militarily into the internal affairs of Vietnam on the pretension that the spread of international communism must be resisted. Further, Americans rationalize that it is in the best interest to coexist with the chief architects of this international Communist conspiracy.

Our country has divided the Communist world into two groups—the good and the bad. And it may just be coincidental that all the bad Communists are peoples of color—Chinese, Cubans, Vietnamese, Koreans. If in truth it is coincidence, I contend it is racist coincidence.

Mr. Speaker, I charge the American Government with hypocrisy of the highest order. Our troops are dying in Asia to prevent a colored minority from determining the future of a colored majority supposedly, and at the same time this Government is supporting white minorities in African countries who are forcibly dominating black majorities.

Mr. Speaker, I call the attention of my